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PENNSYLVANIA BULLETIN

Volume 30
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Number 52
Pages 6529—6870

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Municipal Waste Regulations;
and Part III page 6853 for
the Department of Health's
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**Latest Pennsylvania Code Reporter
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Pennsylvania Bulletin

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

Adoption, Amendment or Repeal of Regulations

Generally an agency wishing to adopt, amend or repeal regulations must first publish in the *Pennsylvania Bulletin* a Notice of Proposed Rulemaking. There are limited instances where the agency may omit the proposal step; they still must publish the adopted version.

The Notice of Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania*

Bulletin before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number and page number. Example: Volume 1, *Pennsylvania Bulletin*, page 801 (short form: 1 Pa.B. 801).

Pennsylvania Code

The *Pennsylvania Code* is the official codification of rules and regulations issued by Commonwealth agencies and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes as soon as they occur. These changes are then permanently codified by the *Pennsylvania Code Reporter*, a monthly, loose-leaf supplement.

The *Pennsylvania Code* is cited by title number and section number. Example: Title 10 *Pennsylvania Code*, § 1.1 (short form: 10 Pa.Code § 1.1).

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government. Title 1 *Pennsylvania Code* lists every agency and its corresponding *Code* title location.

How to Find Documents

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

The *Pennsylvania Bulletin* also publishes a quarterly List of Pennsylvania Code Sections Affected which lists the regulations in numerical order, followed by the citation to the *Pennsylvania Bulletin* in which the change occurred.

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Printing Format

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in ordinary style face.

Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years; in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where “no fiscal impact” is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

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PENNSYLVANIA BULLETIN

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Number 52

Part III

This part contains the
Department of Health's
WIC Program Regulations

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Rule 217 of the Pennsylvania Rules of Disciplinary Enforcement; No. 10 Disciplinary Rules Doc. No. 1

Order

Per Curiam:

And Now, this 7th day of December, 2000, it is ordered, pursuant to Article V, Section 10, of the Constitution of Pennsylvania, that:

1. Rule 217 of the Pennsylvania Rules of Disciplinary Enforcement is amended as set forth in Annex A.

2. This Order shall be processed in accordance with Pa.R.J.A. 103(b). New Pa.R.D.E. 217(j) shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall apply:

(i) immediately to persons becoming formerly admitted attorneys on or after the date of such publication; and

(ii) commencing January 1, 2001 to persons who are formerly admitted attorneys on the date of such publication.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 217. Formerly admitted attorneys.

* * * * *

(j) A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements:

(1) All law-related activities of the formerly admitted attorney shall be conducted under the direct supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j). If the formerly admitted attorney is employed by a law firm, an attorney of the firm shall be designated by the firm as the supervising attorney for purposes of this subdivision.

(2) For purposes of this subdivision (j), the only law-related activities that may be conducted by a formerly admitted attorney are the following:

(i) legal work of a preparatory nature, such as legal research, assembly of data and other neces-

sary information, and drafting of transactional documents, pleadings, briefs, and other similar documents;

(ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and

(iii) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client.

(3) A formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney.

(4) Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

(i) performing any law-related activity for a law firm or lawyer if the formerly admitted attorney was associated with that law firm or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension;

(ii) performing any law-related services from an office that is not staffed, on a full time basis, by a supervising attorney;

(iii) performing any law-related services for any client who in the past was represented by the formerly admitted attorney;

(iv) representing himself or herself as a lawyer or person of similar status;

(v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3);

(vi) rendering legal consultation or advice to a client;

(vii) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body;

(viii) appearing as a representative of the client at a deposition or other discovery matter;

(ix) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction;

(x) receiving, disbursing or otherwise handling client funds.

(5) The supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of employment, identifying the supervising attorney, certifying that the formerly admitted attorney has been employed and that the formerly admitted attorney's activities will be monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the employment of the formerly admitted attorney.

(6) The supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this subdivision (j).

Note: Subdivision (j) is addressed only to the special circumstance of formerly admitted attorneys engaging in law-related activities and should not be read more broadly to define the permissible activities that may be conducted by a paralegal, law clerk, investigator, etc. who is not a formerly admitted attorney. Subdivision (j) is also not intended to establish a standard for what constitutes the unauthorized practice of law. Finally, subdivision (j) is not intended to prohibit a formerly admitted attorney from performing services that are not unique to law offices, such as physical plant or equipment maintenance, courier or delivery services, catering, typing or transcription or other similar general office support activities.

[Pa.B. Doc. No. 00-2202. Filed for public inspection December 22, 2000, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 99]

Adoption of Code of Civility; No. 258; Supreme Court Rules Doc. No. 1

Order

Per Curiam:

And Now, this 6th day of December, 2000, the Court hereby adopts the Code of Civility, as follows.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart D. CODE OF CIVILITY

CHAPTER 99. CODE OF CIVILITY

Preamble

The hallmark of an enlightened and effective system of justice is the adherence to standards of professional responsibility and civility. Judges and lawyers must always be mindful of the appearance of justice as well as its dispensation. The following principles are designed to assist judges and lawyers in how to conduct themselves in a manner that preserves the dignity and honor of the judiciary and the legal profession. These principles are intended to encourage lawyers, judges and court personnel to practice civility and decorum and to confirm the

legal profession's status as an honorable and respected profession where courtesy and civility are observed as a matter of course.

The conduct of lawyers and judges should be characterized at all times by professional integrity and personal courtesy in the fullest sense of those terms. Integrity and courtesy are indispensable to the practice of law and the orderly administration of justice by our courts. Uncivil or obstructive conduct impedes the fundamental goal of resolving disputes in a rational, peaceful and efficient manner.

The following principles are designed to encourage judges and lawyers to meet their obligations toward each other and the judicial system in general. It is expected that judges and lawyers will make a voluntary and mutual commitment to adhere to these principles. These principles are not intended to supersede or alter existing disciplinary codes or standards of conduct.

I. A Judge's Duties to Lawyers and Other Judges:

1. A judge must maintain control of the proceedings and has an obligation to ensure that proceedings are conducted in a civil manner.

2. A judge should show respect, courtesy and patience to the lawyers, parties and all participants in the legal process by treating all with civility.

3. A judge should ensure that court-supervised personnel dress and conduct themselves appropriately and act civilly toward lawyers, parties and witnesses.

4. A judge should refrain from acting upon or manifesting racial, gender or other bias or prejudice toward any participant in the legal process.

5. A judge should always refer to counsel by surname preceded by the preferred title (Mr., Mrs., Ms. or Miss) or by the professional title of attorney or counselor while in the courtroom.

6. A judge should not employ hostile or demeaning words in opinions or in written or oral communications with lawyers, parties or witnesses.

7. A judge should be punctual in convening trials, hearings, meetings and conferences.

8. A judge should be considerate of the time constraints upon lawyers, parties and witnesses and the expenses attendant to litigation when scheduling trials, hearings, meetings and conferences to the extent such scheduling is consistent with the efficient conduct of litigation.

9. A judge should ensure that disputes are resolved in a prompt and efficient manner and give all issues in controversy deliberate, informed and impartial analysis and explain, when appropriate, the reasons for the decision of the court.

10. A judge should allow the lawyers to present proper arguments and to make a complete and accurate record.

11. A judge should not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which he or she represents.

12. A judge should recognize that the conciliation process is an integral part of litigation and thus should protect all confidences and remain unbiased with respect to conciliation communications.

13. A judge should work in cooperation with all other judges and other jurisdictions with respect to availability of lawyers, witnesses, parties and court resources.

14. A judge should conscientiously assist and cooperate with other jurists to assure the efficient and expeditious processing of cases.

15. Judges should treat each other with courtesy and respect.

II. The Lawyer's Duties to the Court:

1. A lawyer should act in a manner consistent with the fair, efficient and humane system of justice and treat all participants in the legal process in a civil, professional and courteous manner at all times.

2. A lawyer should speak and write in a civil and respectful manner in all communications with the court and court personnel.

3. A lawyer should not engage in any conduct that diminishes the dignity or decorum of the courtroom.

4. A lawyer should advise clients and witnesses of the proper dress and conduct expected of them when appearing in court and should, to the best of his or her ability, prevent clients and witnesses from creating disorder and disruption in the courtroom.

5. A lawyer should abstain from making disparaging personal remarks or engaging in acrimonious speech or conduct toward opposing counsel or any participants in the legal process and shall treat everyone involved with fair consideration.

6. A lawyer should not bring the profession into disrepute by making unfounded accusations of impropriety or personal attacks upon counsel and, absent good cause, should not attribute improper motive or conduct to other counsel.

7. A lawyer should refrain from acting upon or manifesting racial, gender or other bias or prejudice toward any participant in the legal process.

8. A lawyer should not misrepresent, mischaracterize, misquote or miscite facts or authorities in any oral or written communication to the court.

9. A lawyer should be punctual and prepared for all court appearances.

10. A lawyer should avoid ex parte communications with the court, including the judge's staff, on pending matters in person, by telephone or in letters and other forms of written communication unless authorized. Communication with the judge on any matter pending before the judge, without notice to opposing counsel, is strictly prohibited.

11. A lawyer should be considerate of the time constraints and pressures on the court in the court's effort to administer justice and make every effort to comply with schedules set by the court.

12. A lawyer, when in the courtroom, should make all remarks only to the judge and never to opposing counsel. When in the courtroom a lawyer should refer to opposing counsel by surname preceded by the preferred title (Mr., Mrs., Ms. or Miss) or the professional title of attorney or counselor.

13. A lawyer should show respect for the court by proper demeanor and decorum. In the courtroom a lawyer should address the judge as "Your Honor" or "the Court" or by other formal designation. A lawyer should begin an argument by saying "May it please the court" and identify himself/herself, the firm and the client.

14. A lawyer should deliver to all counsel involved in a proceeding any written communication that a lawyer

sends to the court. Said copies should be delivered at substantially the same time and by the same means as the written communication to the court.

15. A lawyer should attempt to verify the availability of necessary participants and witnesses before hearing and trial dates are set or, if that is not feasible, immediately after such dates have been set and promptly notify the court of any anticipated problems.

16. A lawyer should understand that court personnel are an integral part of the justice system and should treat them with courtesy and respect at all times.

17. A lawyer should strive to protect the dignity and independence of the judiciary, particularly from unjust criticism and attack.

[Pa.B. Doc. No. 00-2203. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CHS. 1 AND 3]

Amendment to the Rules of Procedure of the Court of Judicial Discipline; Doc. No. 1 JD 94

Order

Per Curiam:

And Now, this 12th day of December 2000, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted proposed amendments to Rules of Procedure 102, 110, 301 and 302, as more specifically hereinafter set forth, *It Is Hereby Ordered That* Rules of Procedure 102, 110, 301 and 302 shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER I. GENERAL PROVISIONS

IN GENERAL

Rule 102. Definitions.

The following words and phrases when used in these rules shall have the following meanings, unless the context or subject matter otherwise requires:

Board is the Judicial Conduct Board.

Board Complaint is the formal charging document filed by the Board to initiate proceedings in the Court pursuant to Article V, § 18(b)(5) of the Pennsylvania Constitution.

Charges are the formal charges contained in the Board Complaint filed with the Court by the Board alleging that a judicial officer has been convicted of a felony, violated Article V, § 17 of the Pennsylvania Constitution, engaged in misconduct in office, neglected or failed to perform the duties of office or engaged in conduct which prejudiced the proper administration of justice or brought the judicial office into disrepute, violated a canon of legal or

judicial ethics or standards of conduct or a rule of the Supreme Court, or that the judicial officer is mentally or physically disabled.

Clerk is the person appointed by the Court to serve as Clerk of the Court.

Conference Judge is a Court member appointed by the President Judge following the filing of a Board Complaint, to preside at the pre-trial conference, to rule on the omnibus motion, and, during a panel hearing, to make evidentiary rulings. A Conference Judge may also be appointed by the President Judge to rule on preliminary motions in proceedings other than those initiated by the filing of a Board Complaint.

Court is the Court of Judicial Discipline. Unless the context clearly indicates otherwise, the term shall include a panel.

Full Court is at least a quorum of the Court.

Judicial Officer includes district justices, judges of the Philadelphia Municipal and Traffic Courts, judges of the Pittsburgh Magistrates Court, judges of the courts of common pleas, the Commonwealth Court, and the Superior Court, justices of the Supreme Court and senior judges or district justices of any court.

Majority is a majority of the members of the Court qualified to vote.

Panel is a group of no fewer than three members of the Court appointed by the President Judge.

Petition for Relief is a document filed pursuant to these Rules to initiate proceedings other than formal charges in the Court.

Preliminary Conference Judge is a member of the Court appointed by the President Judge when deemed appropriate to convene and preside at a preliminary conference.

President Judge is a member of the Court elected by the Court to act as the President Judge.

Quorum is five members of the Court.

Verification is a written statement of fact by the signer, supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification of authorities.

Rule 110. Entry of Appearance.

(A) Counsel for a Judicial Officer shall file an entry of appearance with the Clerk of the Court and shall serve a copy of the entry on the Board Counsel.

(B) The entry of appearance shall include counsel's name, address, phone number, and Pennsylvania Supreme Court Identification Number. Admission Pro Hoc Vice shall be in accordance with the Pennsylvania Bar Admission Rules.

Official Note: Counsel should file an entry of appearance within 15 days of service of the Board Complaint or a Preliminary Conference Judge will be appointed in accordance with Rule 301(B).

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 3. INITIATION OF FORMAL CHARGES

Rule 301. Initiating Formal Charges: Preliminary Conference Judge; Conference Judge; Scheduling.

(A) *Board Complaint.* Proceedings in the Court shall be commenced by the filing of a Board Complaint with the Clerk and concurrent service of the Board Complaint on the Judicial Officer.

(B) *Appointment of Preliminary Conference Judge.* If the Clerk does not receive an entry of appearance for the Judicial Officer within 15 days of service of the Complaint as specified in Rule 302(B), the Clerk shall so notify the President Judge. Within five (5) days of receipt of such notification the President Judge shall appoint a member of the Court to serve as Preliminary Conference Judge.

(C) *Duties of Preliminary Conference Judge.* As soon as practicable after appointment, the Preliminary Conference Judge shall schedule and conduct a preliminary conference at which the Judicial Officer shall be advised of his or her right to be represented by counsel.

(D) *Appointment of Conference Judge.* Within 10 days after a Board Complaint is filed pursuant to paragraph (A), the President Judge shall appoint a member of the Court to serve as Conference Judge on the case as provided in these rules.

(E) *Duties of Conference Judge Following the Filing of Formal Complaint.* In addition to the other duties of Conference Judge set forth in these rules, the Conference Judge shall:

- (1) dispose of all pre-trial motions;
- (2) schedule and conduct a pre-trial conference, in accordance with C.J.D.R.P. No. 421; and
- (3) upon disposition of all pre-trial matters, certify to the President Judge notice that the matter is ready for trial.

(F) The Clerk shall serve certified copies of orders scheduling pre-trial conferences and trials to the Board and the Judicial Officer.

Rule 302. Contents of Board Complaint.

(A) For each charge against the Judicial Officer, the Board Complaint shall:

- (1) state in plain and specific language the nature of the charge;
- (2) specify the allegations of fact upon which the charge is based.

(B) The Board Complaint shall contain a notice to the Judicial Officer advising the Judicial Officer to engage an attorney to represent him or her before the Court in connection with the charges set out in the Board Complaint and directing that the attorney shall file an entry of appearance within 15 days of the service of the Board Complaint. The notice shall be substantially in the following form:

You have an absolute right to be represented by a lawyer in all proceedings before the Court of Judicial Discipline. Your attorney should file an entry of appearance with the Court of Judicial Discipline within 15 days of the service of this Complaint in accordance with C.J.D.R.P. No. 302(B).

(C) If an entry of appearance is not filed within the time specified in paragraph (B), the Clerk shall immediately notify the President Judge.

(D) Within five (5) days of notification by the Clerk as in paragraph (C), the President Judge shall appoint a member of the Court to serve as Preliminary Conference Judge. The Preliminary Conference Judge shall then proceed in accordance with C.J.D.R.P. No. 301(C).

(E) The Board Complaint shall give notice to the Judicial Officer of the time period within which the Judicial Officer must file an omnibus motion pursuant to Rule 411.

(F) The Board Complaint shall be signed and verified by counsel for the Board.

[Pa.B. Doc. No. 00-2204. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Promulgation of New Rule 1036 Governing Dismissal Upon Affidavit of Noninvolvement; No. 344; Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 11th day of December, 2000, new Pennsylvania Rule of Civil Procedure 1036 is promulgated to read as follows.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective January 1, 2001.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

Rule 1036. Dismissal Upon Affidavit of Noninvolvement.

(a) As used in this rule, "action" means an action subject to an Act of Assembly which provides for dismissal of the action as to a party based upon an affidavit of noninvolvement.

Official Note: Actions pursuant to the following Acts of Assembly are within the scope of this rule: Section 7502 of the Judicial Code, 42 Pa.C.S. § 7502, an action for negligence against a construction design professional and Section 827-A of the Health Care Services Malpractice Act, 40 P.S. § 1301.827-A, a medical malpractice action naming a health care provider as a defendant.

(b) Any party seeking dismissal of the action shall file a motion to dismiss which shall have attached thereto the affidavit of noninvolvement.

(c) Any party opposing the motion may file a response.

(d) Upon reviewing the motion and any response thereto and determining the existence of a prima facie case for dismissal of the action as to a party, the court shall enter an order

(1) allowing any party opposing the motion

(i) to conduct limited discovery directed solely to the issue of involvement of any party seeking dismissal and

(ii) prior to the disposition of the motion, to file affidavits, depositions and such other evidentiary materials as would permit a jury to find that any party seeking dismissal was involved in any activities upon which the claim is based, and

(2) scheduling an argument to decide the motion.

(e) The argument shall be limited to the sole issue of whether any party opposing the motion has produced evidence which, when considered in a light most favorable to that party, would require the issue of the involvement of any party seeking dismissal to be submitted to a jury.

Explanatory Comment

New Rule 1036 sets forth a procedure to govern dismissal of an action pursuant to an affidavit of noninvolvement. Two statutes, cited in the note to subdivision (a), presently provide for such an affidavit: Section 7502 of the Judicial Code¹ relating to construction design professionals and Section 827-A of the Health Care Services Malpractice Act² relating to health care providers.

These statutes speak of having "the action against such construction design professional dismissed upon the filing of an affidavit of noninvolvement"³ and of causing an action against a health care provider "to be dismissed upon the filing of an affidavit of noninvolvement with the court."⁴ The role of the court in these procedures, not specified by the statutes, is supplied by the new rule.

By the Civil Procedural Rules Committee

REA BOYLAN THOMAS,
Chair

[Pa.B. Doc. No. 00-2205. Filed for public inspection December 22, 2000, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1915]

Amendments to the Rules Relating to Domestic Relations Matters; Recommendation 56

The Domestic Relations Procedural Rules Committee proposes the following amendments to Rules of Civil Procedure 1910.3, 1910.6, 1910.13-2, 1910.16-2, 1910.16-4, 1910.16-6 and 1915.3. The Committee solicits comments and suggestions from all interested persons prior to submission of these proposed amendments to the Supreme Court of Pennsylvania.

Written comments relating to the proposed rules must be received no later than Thursday, March 1, 2001 and must be directed to:

Patricia A. Miles, Esquire
Council, Domestic Relations Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
FAX (717) 795-2116
E-mail patricia.miles@supreme.court.state.pa.us

The notes and explanatory comments which appear in connection with the proposed amendments have been inserted by the Committee for the convenience of those using the rules. They will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

¹ 42 Pa.C.S. § 7502.

² 40 P.S. § 1301.827-A.

³ 42 Pa.C.S. § 7502(a).

⁴ 40 P.S. § 1301.827-A(a).

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.3 Parties.

An action shall be brought

(a) by a person, including a **minor parent** or a minor spouse, to whom a duty of support is owing, or

* * * * *

Rule 1910.6 Notification.

(a) Parties to a support action **and their attorneys** shall be provided notice of all proceedings in which support obligations might be established or modified. Notice must be provided at least 20 days prior to the proceeding. The parties **and their attorneys** shall also be provided with a copy of any order issued in the support action within 14 days after issuance of the order. **If there is no activity in a support action for a period of two years, the domestic relations section shall send a notice to each of the parties' attorneys advising each attorney that his or her appearance in the support action shall be deemed to be withdrawn unless the attorney objects within thirty (30) days of the date the notice is mailed to the attorney. An attorney representing a party in a support action shall not be deemed to be representing that party in any other action, nor shall a withdrawal of appearance in a support action be deemed to be a withdrawal of appearance for the party in any other proceeding.**

* * * * *

Rule 1910.13-2. Form of Request for Bench Warrant and Supporting Affidavit. Form of Bench Warrant.

* * * * *

Official Note: Standards for setting bail are set forth in Rule of Criminal Procedure [4004] 525.

* * * * *

Rule 1910.16-2. Support Guidelines. Calculation of Net Income.

* * * * *

(f) **Dependency Tax Exemption.** In order to maximize the total income available to the parties and children, the court may, as justice and fairness require, award the federal child dependency tax exemption to the non-custodial parent, or to either parent in cases of equally shared custody, and order the other party to execute the waiver required by the Internal Revenue Code, 26 U.S.C.A. § 152(e). The tax consequences resulting from an award of the child dependency exemption must be considered in calculating each party's income available for support.

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula.

(a) The following formula shall be used to calculate the obligor's share of the basic guideline child support, spousal support and/or alimony pendente lite obligation:

* * * * *

PART IV. SPOUSAL SUPPORT OR APL

With Dependent Children

- | | |
|---|-----------|
| 12. Obligor's Monthly Net Income (line 4) | _____ |
| 13. Less Obligor's support, alimony pendente lite or alimony obligations, if any, to children or former spouses who are not part of this action (See Rule 1910.16-2(c)(2)) | (_____) |
| 14. Less Obligees Monthly Net Income (Line 4) | (_____) |
| 15. Difference | _____ |
| 16. Less Obligor's Total Child Support Obligation (line 11) | (_____) |
| 17. Difference | _____ |
| 18. Multiply by 30% | x .30 |
| 19. AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL | _____ |

Without Dependent Children

- | | |
|---|-----------|
| 20. Obligor's Monthly Net Income (line 4) | _____ |
| 21. Less Obligor's support, alimony pendente lite or alimony obligations, if any, to children or former spouses who are not part of this action (See Rule 1910.16-2(c)(2)) | (_____) |
| 22. Less Obligees Monthly Net Income (Line 4) | (_____) |
| 23. Difference | _____ |
| 24. Multiply by 40% | x .40 |
| 25. AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL | _____ |

* * * * *

Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation

* * * * *

(c) **Unreimbursed Medical Expenses.** Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes and obligor's share added to his or her basic support obligation.

* * * * *

(4) For purposes of calculating annual expenses pursuant to this subdivision (c), the year begins on the effective date of the support order.

* * * * *

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.3. Commencement of Action. Complaint. Order.

* * * * *

(d) If the mother of the child is not married and the child has no legal or presumptive father, then a putative father initiating an action for custody, partial custody or visitation must file an acknowledgment or claim of paternity pursuant to 23 Pa.C.S. § 5103 and attach a copy to the complaint in the custody action.

* * * * *

[Explanatory Comment—1994

A system of office conferences or pretrial conferences is not required by these rules. Business of the Court Rule 212 governing pretrial conferences is sufficient to permit a local court to require the holding of a conference when it is practical and feasible.]

[Pa.B. Doc. No. 00-2206. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1100]

Order Amending Rule 1117¹; No. 267; Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the amendments to Rule of Criminal Procedure 1117 (Presence of the Defendant) that were adopted on December 8, 2000, effective January 1, 2001. The changes make it clear that the defendant's absence without cause does not preclude proceeding with the trial, including the imposition of sentence, and address in the Comment the requirements for the waiver of a defendant's presence at trial. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 8th day of December, 2000, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 28 Pa.B. 5869 (December 5, 1998), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 720), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 1117 is amended in the attached form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2001.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1100. TRIAL

Rule 1117. Presence of the Defendant.

(a) The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. The defendant's absence without cause shall not preclude proceeding with the trial including the return of the verdict **and the imposition of sentence.**

* * * * *

Official Note: Rule 1117 [Adopted] adopted January 24, 1968, effective August 1, 1968; amended October 28, 1994, effective as to cases instituted on or after

¹ Rule 1117 will be renumbered Rule 602 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

January 1, 1995; renumbered Rule 602 and amended March 1, 2000, effective April 1, 2001; amended December 8, 2000, effective January 1, 2001.

Comment

[Paragraph (c) was added in 1994 to make it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.]

Nothing in this rule is intended to preclude a defendant from affirmatively waiving the right to be present at any stage of the trial, see e.g., *Commonwealth v. Vega*, 719 A.2d 227 (Pa. 1998) (plurality) (requirements for a knowing and intelligent waiver of a defendant's presence at trial includes a full, on-the-record colloquy concerning consequences of forfeiture of the defendant's right to be present) or from waiving the right to be present by his or her actions, see e.g., *Commonwealth v. Wilson*, 712 A.2d 735 (Pa. 1998) (defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present).

Former Rule 1117(c) was moved to Rule 642 (Trial *de novo*) in 2000 as part of the reorganization of the rules.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the December 8, 2000 amendments published with the Court's Order at 30 Pa.B. 6546 (December 23, 2000).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 1117²

Presence of Defendant; Waiver

On December 8, 2000, effective January 1, 2001, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule of Criminal Procedure 1117 (Presence of Defendant) to make it clear that the defendant's absence without cause does not preclude proceeding with the trial, including the imposition of sentence, and to address in the Comment the requirements for the waiver of a defendant's presence at trial.

The Committee examined Rule 1117 in response to an inquiry from the Court concerning the juxtaposition of the first sentence of Rule 1117(a) with the last sentence, and whether they were intentionally not "parallel." The first sentence of Rule 1117(a) requires the defendant's presence at every stage of the trial, including the trial, the return of the verdict, and the imposition of sentence; the last sentence makes reference only to proceeding in the defendant's absence with the trial and the return of the verdict.

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

² Rule 1117 will be renumbered Rule 602 as part of the renumbering and reorganization of the Rules of Criminal Procedure that the Court adopted on March 1, 2000, effective April 1, 2001.

Because Rule 1117(a) is virtually the same as it was when adopted by the Court in the mid-1960's, the Committee's history concerning the intent of the rule is meager, so the former Committee's reason for proposing the inclusion of the language "and at the imposition of sentence" in the first sentence of Rule 1117(a), but omitting similar language from the second sentence, is not apparent. Furthermore, a review of the case law was similarly lacking in guidance, since the Court has not spoken directly on sentencing a defendant in absentia. In view of this, to correct the inconsistency, "and the imposition of sentence" has been added at the end of the second sentence of Rule 1117(a).

During our consideration of Rule 1117(a), the Committee reviewed the line of cases addressing waiver of the right to be present at trial. Noting that Rule 1117(a) requires that a defendant be present at all stages of the trial but is silent concerning waiver, the Committee agreed that it would be helpful to the bench and bar if the Rule 1117 Comment was revised to include examples of the ways in which a defendant may waive the right to be present at trial. Accordingly, the Rule 1117 Comment has been revised to include the parenthetical citation to *Commonwealth v. Vega*, 719 A.2d (Pa. 1998), which addresses waiver when the defendant is present, to make it clear that 1) the rule is not intended to prohibit a defendant from affirmatively waiving the right to be present at any stage of the trial, and 2) before permitting the waiver, the court must conduct an on-the-record colloquy that includes an explanation of the consequences of forfeiting the right to be present. Similarly, a parenthetical citation to *Commonwealth v. Wilson*, 712 A.2d 735 (Pa. 1998), which is representative of the line of cases addressing waiver when the defendant intentionally absents himself or herself, to make it clear that a defendant may waive the right to be present by his or her actions.

[Pa.B. Doc. No. 00-2207. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 500]

Proposed Amendments Concerning Default Judgment Prohibited in Actions for the Recovery of Possession of Real Property

Introduction

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.C.P.D.J. 504, 512, and 514 to clarify that default judgments may not be entered in actions for the recovery of possession of real property ("Landlord/Tenant" actions), and to make other technical or "housekeeping" amendments to these rules. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the

official Committee Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory Reports.

The text of the proposed changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

Michael F. Krimmel, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

or e-mail to: mike.krimmel@supreme.court.state.pa.us no later than Friday, January 26, 2001.

By the Minor Court Rules Committee:

FRED A. PIERANTONI, III,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 504. Setting the date for hearing; delivery for service.

* * * * *

Official Note:

The hearing date in subdivision (1) of this rule [**was**] **is** required to be set not less than seven days from the filing of the complaint because of the requirement [**of Pa.R.C.P.D.J. No. 1**] **in Rule 506(B)** that service be made at least five days before the hearing. It was thought that the requirement that the [**complaint be served**] **hearing be held** not more than fifteen days from the filing of the complaint should provide ample time to make the type of service required in these cases. However, the complaint may be reinstated upon written request of the plaintiff as in [**trespass and assumpsit cases**] **civil actions**. [**See Pa.R.C.P.D.J. No. 314 (E) and the Note to Pa.R.C.P. D. J. No. 314.**] **See Rule 314(E) and Note.**

The notice for the defendant set forth in subdivision (4) of this rule varies somewhat from the notice required in [**trespass and assumpsit**] **civil actions** under [**Pa. R.C.P.D.J. No. 1**] **Rule 305**. There are a number of reasons for this. First, there can be no default judgment in these possessory actions [**and, secondly,**] **. See Rule 512(A) and Note. Secondly,** it was thought that cross-complaints of defendants in these cases should be limited to those arising out of the occupancy of the premises.

Amended Oct. 17, 1975, effective in 90 days; June 30, 1982, effective 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996; **Note amended** _____, **effective** _____.

Rule 512. Hearings and Evidence.

A. The plaintiff must appear at the hearing and present testimony in an action for the recovery of possession of real property.

B. The district justice shall be bound by the rules of evidence, except that a bill, estimate, receipt or statement of account which appears to have been made in the

regular course of business may be introduced in evidence by any party without affidavit or other evidence of its truth, accuracy or authenticity.

Official Note:

Subdivision A of this rule is intended to make clear that the district justice may not enter a default judgment in a possessory action, including a judgment for money only. The plaintiff must appear and give testimony to prove the complaint even when the defendant fails to appear for the hearing. See Rule 514(A) and Note. See also Section 250.503(a) of The Landlord and Tenant Act of 1951, 68 P.S. § 250.503(a). When the plaintiff fails to appear at the hearing, the district justice may continue the hearing for cause or dismiss the complaint.

Subdivision B of [This] this rule is the same as Rule 321 of the [trespass and assumpsit] civil action rules.

Amended June 30, 1982, effective 30 days after July 17, 1982; amended _____, effective _____.

Rule 514. Judgement.

* * * * *

Official Note:

Subdivision A of this rule requires that the plaintiff appear and give testimony to prove the complaint before the district justice can enter judgment against the defendant, even when the defendant fails to appear for the hearing. The district justice may not enter a default judgment in a possessory action, including a judgment for money only. See Rule 512(A) and Note. The various issues that the district justice must determine at the hearing include, but are not limited to the amount of rent due, if any; the amount of damages for unjust detention, if any; the amount of physical damages to the leasehold premises, if any; the amount found to constitute the monthly rental, and; the amount of the security deposit held by the landlord, if any.

The separate entries provided in Subdivision A are made necessary as a result of the rental deposit provisions for appeal or certiorari contained in [Pa. R.C.P.D.J. Nos. 1008.B. and 1013.B.] Rules 1008(B) and 1013(B), as well as the wage attachment provisions contained in [Act 5 of 1996] Section 8127 of the Judicial Code, 42 Pa.C.S. § 8127 (Act 5 of 1996).

Subdivision B of this rule makes provision for a money judgment for the defendant if the defendant prevails in a greater amount on the defendant's cross-complaint.

Amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended effective December 1, 1983; amended March 27, 1992, effective June 25, 1992 [The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line."]; March 28, 1996, effective March 29, 1996; Note amended _____, effective _____.

REPORT

*Proposed Amendments to Pa.Rs.C.P.D.J.
504, 512, and 514*

Default Judgement Prohibited in Actions for the Recovery of Possession of Real Property ("Landlord/Tenant" Actions)

The Committee undertook a review of the issue of the entry of default judgments in landlord/tenant actions on its own initiative, recognizing a need for clarification in the rules that default judgments should be prohibited in these cases. The prohibition against default judgments in landlord/tenant cases is referred to in the Note to Rule 504, but the Committee felt that the prohibition should be more prominently announced in the rules. The Committee noted that the statewide district justice computer system (DJS) does permit entry of a disposition of default judgment in landlord/tenant actions, and that many district courts routinely enter this disposition when a defendant fails to appear for a landlord/tenant hearing. The Committee learned that the DJS recorded 12,000 such dispositions in 1999 alone.

In conjunction with the clarification regarding default judgments, the Committee also recognized the need for several technical or "housekeeping" amendments to Rules 504, 512, and 514.

A. Default Judgments in Landlord/Tenant Actions

In considering how to clarify the prohibition of default judgments in landlord/tenant actions, the Committee first considered whether such a prohibition is necessary and whether it is appropriately pronounced by procedural rule. The question was raised as to why it is necessary to hold a perfunctory hearing when the defendant fails to appear. Upon review of the Landlord and Tenant Act of 1951 and the existing rules, the Committee concluded that such a hearing is necessary. First, the Committee looked to the statutory language of the Landlord and Tenant Act of 1951, 68 P.S. § 250.101 et seq. Section 250.503(a) of the Act states, *inter alia*:

(a) On the day and at the time appointed or on a day to which the case may be adjourned, the justice of the peace shall proceed to hear the case. If it appears that the complaint has been sufficiently proven, the justice of the peace shall enter judgment against the tenant: . . .

68 P.S. § 250.503(a) (emphasis added). This statutory language suggests that a hearing is necessary for the plaintiff to sufficiently prove the landlord/tenant complaint.

Secondly, Rule 514 contains language similar to that found in 68 P.S. § 250.503(a). Rule 514(A) states, *inter alia*:

(A) If it appears at the hearing that the complaint has been proven, the district justice shall enter judgment against the defendant that the real property be delivered up to the plaintiff and shall enter judgment by separate entries: . . .

Pa.R.C.P.D.J. No. 514 (emphasis added). The language of this rule, like that in the statute, suggests that a hearing is necessary for the plaintiff to sufficiently prove the landlord/tenant complaint. In further support of its conclusion, the Committee noted that Rule 514 requires that the district justice make a number of separate determinations when entering judgment for the plaintiff, not all of which can be ascertained from the face of the complaint. Specifically, the district justice must determine, *inter alia*, the amount found to constitute the monthly rental. Also,

if a security deposit is to be applied to the judgment, the district justice needs to determine the amount of the security deposit held by the landlord. These determinations cannot be ascertained from the complaint, and therefore can be made only after hearing testimony.

Having concluded that a hearing is required before a district justice can enter judgment for the plaintiff in a possessory action, and therefore that default judgment should be prohibited, the Committee went on to discuss the most appropriate way in which to incorporate this into the rules. As previously stated, the Note to Rule 504 already states that "... there can be no default judgment in these possessory actions ..." Pa.R.C.P.D.J. No. 504, Note. The Committee considered an amendment to Rule 504, but ultimately focused its attention on Rule 512, relating to hearings and evidence. The Committee decided that Rule 512 should be divided into two parts. Subdivision A would read, "The plaintiff must appear at the hearing and present testimony in an action for the recovery of possession of real property." Subdivision B would contain the existing language of the rule. A sentence would then be added to the note to clarify that the district justice may not enter a default judgment, including a judgment for money only.

The Committee also decided that the Note to Rule 504, relating to setting the date for hearing, delivery of service; and the Note to Rule 514, relating to judgment, should be amended to make clear that default judgments are not permitted and to cross reference Rule 512 with regard to this prohibition.

B. Technical and "Housekeeping" Amendments

In conjunction with the substantive changes discussed above, the Committee identified a number of technical and "housekeeping" amendments needed in the notes to Rules 504, 512, and 514.

In the Note to Rule 504, the Committee is proposing a change to the second sentence of the first paragraph to substitute the phrase "complaint be served" with the phrase "hearing be held" to make the language in the note consistent with the rule. The existing reference to complaint being served "... not more than fifteen days from the filing of the complaint ..." is not consistent with the rule and has created some confusion.¹

In the Note to Rule 512, the Committee proposes to clarify the proper procedure when the plaintiff fails to appear at a landlord/tenant hearing. While this procedure is made clear in civil actions by Rule 319, relating to failure of a party to appear at the hearing, there is no analogous rule in the 500 Series, nor did the Committee believe that such a rule would be necessary. The proposed change to the note, however, would simply clarify that when the plaintiff fails to appear at the hearing, the district justice may continue the hearing for cause or dismiss the complaint.

In the Note to Rule 514, the Committee is proposing a new first paragraph to not only clarify that the plaintiff must appear and give testimony, but also to clarify the various issues that the district justice must determine, at the hearing, before the district justice can enter judgment for the plaintiff.

¹ This particular change was actually considered by the Committee in 1997 and was identified as the Committee's Recommendation #1 of 1997. However, for unknown reasons, the Committee never published the recommendation and there is some confusion as to whether or not it was "officially" submitted to the Supreme Court for approval. Therefore, this change is being incorporated into this current proposal and replaces Recommendation #1 of 1997.

In the notes to all three rules, the Committee proposes minor changes to correct citation form and the make references to other rules more consistent.

[Pa.B. Doc. No. 00-2208. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Scheduling Civil Trials Involving State Prisoners; Administrative Doc. 02 of 2000

And Now, this 1st day of December, 2000, it is hereby *Ordered* and *Decreed* that Administrative Docket 06 of 1998 is hereby rescinded.

It is further *Ordered* and *Decreed* that civil cases may be scheduled requiring the presence of an on-writ incarcerated prisoner at the discretion of the team leader in consultation with the Trial Division Administrative Judge and the Supervising Judge of the Criminal Division. Requests for the presence of an on-writ state incarcerated prisoner shall be weighed against the scheduling impact on criminal listings, the availability of prison bed space, the availability of sheriffs to both guard and transport the prisoner, the current prison population, the costs associated with the request, the availability of alternatives such as video conferencing, and other factors deemed appropriate to the decision.

By the Court

JOHN W. HERRON,
Administrative Judge, Trial Division

This Administrative Docket is promulgated in accordance with the April 11, 1987 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. ★51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Administrative Docket is also available on the Court's web site at <http://courts.phila.gov>.

[Pa.B. Doc. No. 00-2209. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY

PART II. ALLEGHENY COUNTY COMMON PLEAS RULES

Orphans' Court Rules

Order of Court

And Now, this 6th day of December, 2000, the Board of Judges of Allegheny County having voted at the Board of

Judges' meeting held October 16, 2000 to rescind in their entirety existing Allegheny County Orphans' Court rules and to adopt the attached Allegheny County Orphans' Court rules, it is hereby Ordered and Decreed that all existing Allegheny County Orphans' Court rules are rescinded and the attached Orphans' Court rules are adopted.

This Order is promulgated in accordance with Pa.O.C. Rule 1.2 and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. This Order shall be filed with the Prothonotary of Allegheny County in the Rules Docket. Copies shall be submitted to the Clerk of the Orphans' Court, the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Orphans' Court Procedural Rules Committee.

By the Court:

ROBERT A. KELLY,
President Judge

ORPHANS' COURT DIVISION RULE 1.2

Rule 1.2A. Sessions of Court; Standard of Time; Motions.

Sec. 1. Sessions of Court.

The regular sessions of the Court will be held daily, except Saturdays, Sundays and legal holidays, unless otherwise ordered.

Sec. 2. Standard of Time.

Whenever a certain time is stated in these Rules, it shall mean prevailing time.

Sec. 3. Petitions; Motions.

All petitions, motions and miscellaneous business must be presented at 9:30 a.m. or at such other time as may be fixed by Order of Court.

The party who presents a petition or motion shall include a notice of presentation and certificate of service unless all parties in interest consent to the motion. Unless the sole relief requested is the issuance of a citation, ten (10) days' notice of presentation of any petition or motion is required absent an emergency or consent by the opposing party to a shorter notice of presentation.

Where a judge has been actively involved in the matter which is the subject of the petition or motion, counsel shall present the petition or motion to such judge.

Sec. 4. Costs; Vacation of Order for Failure to Pay Cost.

No petition shall be retained of record and no citation, rule or certificate shall be issued, except for cause shown, until all filing costs have been paid. If the costs are not paid within thirty days, the Clerk shall report the default to a judge, who may vacate the order of court.

Rule 1.2B. Attorneys.

Sec. 1. Appearance.

Every attorney presenting any paper to the Court or to the Clerk shall endorse thereon the attorney's name, office address, and telephone number in Pennsylvania and the attorney's identification number issued by the Court Administrator of Pennsylvania. Such endorsement shall constitute an appearance. An appearance may also be entered by praecipe.

Sec. 2. Withdrawal of Attorney Appearance.

An attorney's appearance for a party may not be withdrawn without leave of court unless another attorney has entered or simultaneously enters an appearance for the party.

An attorney of record who desires to withdraw an appearance with leave of Court must:

(a) File a verified petition setting forth the reasons for the request;

(b) At least ten (10) days prior to the time of presentation of the petition, serve upon the client and all other parties to the proceeding a true and correct copy of the petition and a notice of the date, time and place that the petition will be presented to the Court; and

(c) Certify that the petition and notice of the time, date and place of presentation of the petition were duly served.

Leave to withdraw an appearance will not be granted unless, after consideration of all relevant factors, the Court determines that the withdrawal will not unduly prejudice any party or unduly delay the processing of the case for final disposition.

Sec. 3. Agreements.

All agreements between attorneys will be considered of no validity, if disputed, unless made in writing or of record in open Court.

Sec. 4. Attendance, Appearance or Verification by Counsel.

Whenever these Rules provide for attendance, appearance, or signing or verification by any person or entity, such attendance, appearance, signing or verification may be by counsel of record; provided, however, that factual allegations in a petition for other than procedural relief shall be verified by the party on whose behalf the petition is presented or by an authorized person familiar with such facts, other than counsel.

Rule 1.2C. Recording Inter Vivos Trusts.

Before a petitioner can invoke the jurisdiction of the Court relating to inter vivos trusts, such petitioner must record the instrument creating the inter vivos trust in the office of the Clerk or the Recorder of Deeds of Allegheny County. Unacknowledged instruments may be recorded in the office of the Clerk by proof of the signatures thereto in the manner required for the probate of wills, unless otherwise ordered by the Court. Nothing herein shall prevent a beneficiary of an inter vivos trust from proceeding by citation to compel the production and recording of a trust instrument.

ORPHANS' COURT DIVISION RULE 2.3

Rule 2.3. Definitions.

The following words when used in these rules, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this rule:

"Clerk" shall mean the Clerk of the Orphans' Court Division of the Court of Common Pleas of Allegheny County, Pennsylvania.

"Court", "Orphans' Court" or "Orphans' Court Division" shall mean the Orphans' Court Division of the Court of Common Pleas of Allegheny County, Pennsylvania, or any judge thereof, having jurisdiction.

"Fiduciary" shall mean and include executors, administrators, guardians, trustees and attorneys-in-fact,

whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the Orphans' Court Division.

"PA O.C. Rules" shall mean the Pennsylvania Supreme Court Orphans' Court Rules, as amended from time to time.

"PEF Code" shall mean the Pennsylvania Probate, Estates and Fiduciaries Code of 1972, 20 Pa.C.S.A. § 101 et seq., as amended from time to time.

"Register of Wills" or "Register" shall mean the Register of Wills of Allegheny County, Pennsylvania.

ORPHANS' COURT DIVISION RULE 3.2

Rule 3.2. Return Days.

The return day is the last day to answer or take other legal action with respect to a citation or other process. The answer or other pleading shall be filed at or before 9:30 a.m. on the return day.

A pre-hearing conference date, a hearing date, or both, shall be fixed by the Court but shall not be the same date as the return day unless specially ordered.

ORPHANS' COURT DIVISION RULE 3.7

Rule 3.7. Hearings; Briefs; Amicus Curiae.

(a) When pleadings have been filed by the parties in conformity with prescribed procedure, or when the time for filing additional pleadings has expired, or when no pleadings are required, the Court will fix a day for a pre-hearing conference date, a hearing, or both, notice of which shall be given to all parties as the Court may direct.

(b) Unless prohibited by the Court, briefs shall be permitted as a matter of course and shall be provided to the Court and counsel of record (or opposing unrepresented parties) as directed by the Court. Such briefs shall contain a statement of the questions involved, a history of the case and the argument.

(c) Appearances and briefs amicus curiae may be entered and filed with leave of Court and as the Court may direct.

ORPHANS' COURT DIVISION RULE 5.7

Rule 5.7. Parties in Military Service.

When any party in interest in any proceeding in this Court is in the military service of the United States, the procedure shall conform to the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C.A. 501 et seq.

ORPHANS' COURT DIVISION RULE 6.1

Rule 6.1. Form of Account.

Sec. 1. Form.

Accounts of all fiduciaries presented for confirmation and audit, whether joint or separate, shall be prepared in any form approved by the Supreme Court or in the forms A to E of this Rule and shall be designated by consecutive numbers starting with First and shall be further designated as Interim or Final. The model account formats of the PA O.C. Rules shall be the preferred format. An account which is not in a form consistent with these Rules shall not be confirmed nisi and shall not be scheduled for audit.

Accounts filed after confirmation nisi of an account shall be designated Supplemental. No account will be confirmed absolute pending disposition of all previously filed unaudited and unconfirmed accounts unless the

account includes all matters embraced in such prior accounts. The original and one copy of the account shall be filed with the Clerk.

Sec. 2. Copy of Inventory.

Accounts filed by executors, administrators, and guardians under this Rule shall have attached thereto a copy of the inventory (and any supplemental inventory) certified by counsel to be a true and correct copy of the inventory filed.

Sec. 3. Signing-Notice to Co-Fiduciary.

Every account shall be signed by all the fiduciaries stating it. Notice shall be given to each co-fiduciary who does not join in the statement of the account, and proof thereof shall be filed with the Clerk.

Sec. 4. Verification of Accounts.

Every account shall be supported by the verifications of all fiduciaries joining therein stating that (i) the account as stated is true and correct; (ii) that all disbursements credited have been paid to the parties entitled thereto; and (iii) with respect to the accounts of personal representatives (except as provided in Rule 6.4), that four months have elapsed from the date of the first complete advertisement of the grant of letters.

Sec. 5. Request for Distribution.

There shall be a request for distribution signed by the accountant at the end of the account requesting that distribution be determined by the Court in accordance with the petition for distribution to be offered in evidence at the audit of the account.

Sec. 6. Confirmation Nisi; Audit List.

All accounts filed with the Clerk will be confirmed nisi not less than thirty days after the time of filing. An audit list will be made up of all accounts confirmed nisi. The audit list will be called beginning on the second Monday following confirmation nisi, and shall continue thereafter each day until all of the accounts have been audited.

Sec. 7. Attendance at Audits.

(a) Except as provided in subsection (b) immediately below, accountants, claimants, and all other interested persons, either personally or through their counsel, shall attend audits at the time fixed therefor and furnish such information and produce such evidence as may be necessary to make proper disposition of claims and objections, and to determine proper distribution.

(b) Unless ordered by the Court, an accountant is not required to attend the audit if the petition for distribution has been verified by the accountant.

Sec. 8. Continuance.

Unless otherwise ordered by the Court, if a case on an audit list is continued, it shall be placed upon the next audit list by the Clerk.

Sec. 9. Petition for Distribution; Amendments/Additions.

(a) Except as provided by subsection (b) immediately below, every petition for distribution may be typed on forms provided by the Clerk (or a reasonable facsimile thereof) signed and verified by the accountant, and offered in evidence at the audit of the account. The petition shall be prima facie evidence of the allegations therein and, unless objected to by an interested party or by the Court, or changed or altered by the evidence offered at the audit or subsequently with leave of Court, shall be conclusive for the entry of a decree of confirma-

tion and distribution. Receipts or disbursements received or made after audit and before the entry of a decree of distribution may be accounted for in a supplemental account, which shall be signed and verified by the accountant.

(b) If additional assets are discovered after audit and confirmation absolute of an account, then a signed and verified petition for the distribution of the same may be filed without an inventory or a formal accounting, provided that it appears in such petition that any inheritance or estate tax due on account thereof has been paid, that there are no known unpaid creditors of the estate and provided that the appropriate notice of presentation has been given.

(c) In addition to the matters required by subsection (a) above, the petition submitted by a guardian of the estate of a person who is still a minor shall set forth the name, address and relationship of the person who assisted the minor in the examination of the account. For any petition for distribution which is filed because a minor has reached the age of majority, the petitioner shall attach a certified copy of the minor's birth record, or such other evidence of age as the Court shall require.

Sec. 10. Distribution in Kind Under Sec. 3534 of the PEF Code.

(a) In every estate in which real estate remains for distribution, the decree of distribution shall consist of two schedules:

Schedule A—Distribution of personalty.

Schedule B—Distribution of real estate.

Schedule B shall contain a legal description and shall be submitted to the Court at the audit of the account.

(b) If the heirs, devisees, or legatees elect in writing to take real estate not specifically devised, then it shall be allotted and decreed to them in accordance with their written election or agreement.

(c) If the heirs, devisees, or legatees do not elect in writing to take unconverted real estate in kind, or if they are unable to agree as to the division thereof, any party in interest, including the personal representative of the estate, by petition presented at or prior to the audit of the account, may request the Court to divide, partition, and allot the real estate. When so requested by petition to divide, partition, and allot unconverted real estate, the Court shall fix a procedure for the disposition of such petition.

Sec. 11. Audit; Confirmation; Distribution; Suspension.

(a) Accounts confirmed nisi and any supplements thereto offered at the audit will be examined and audited by the Court. After audit, the accounts will be confirmed absolutely as stated or as modified and re-stated in accordance with the evidence, and balances for distribution decreed to the parties or suspended as circumstances may require. A decree of distribution for a decedent's estate shall not be entered unless proper advertisement has been made or has been excused by the Court in accordance with Rule 6.4.

(b) A decree of distribution may suspend distribution of any part of an estate. In order to lift such a suspension, a petition for that purpose must be submitted to the judge who entered the original decree suspending distribution, setting forth all receipts and disbursements since the entry of that decree. A proposed decree of distribution shall be attached to the petition.

Sec. 12. Receipts for Distributions.

Receipts for distribution, if obtained, may be filed with the Clerk.

Note: The forms for accounts have not been reproduced in this publication.

ORPHANS' COURT DIVISION RULE 6.3

Rule 6.3. Notice to Parties in Interest.

No account shall be confirmed absolutely unless the accountant has given written notice of the filing of the account and the call thereof for audit and confirmation in accordance with PA O.C. Rule 6.3. Notice sent by first class mail shall be deemed compliance with this rule. The notice shall (i) include a statement that a petition for distribution will be presented at the audit, (ii) state the date, time, and place of the audit to the extent then known, and (iii) include a statement as to any matters for which the accountant intends to request an adjudication at audit.

ORPHANS' COURT DIVISION RULE 6.4

Rule 6.4. Time for Filing of Accounts.

The following accounts may be filed before four months have elapsed from the date of the first complete advertisement of the grant of letters:

(a) An account of an administrator d.b.n. when four months have elapsed since the first complete advertisement of the original grant of letters;

(b) An account of an administrator pendente lite;

(c) An account filed pursuant to Sec. 3531 of the PEF Code, dealing with small estates;

(d) An account directed to be filed by the Court.

ORPHANS' COURT DIVISION RULE 6.10

Rule 6.10. Objections to Account; Service.

Any objection to an account and to any matter set forth in or arising out of the petition for distribution shall be made orally or in writing prior to or at audit. Written objections to accounts may be filed prior to audit with the Clerk. Copies of all objections, when filed or presented, must be served on counsel of record for the accountant or on the accountant who is not so represented. The accountant or counsel will provide written notice of the filing of the objections to all parties in interest or to their counsel, if known.

ORPHANS' COURT DIVISION RULE 7.1

Rule 7.1. Exceptions.

(a) *General Rule.* No later than twenty (20) days after entry of an order, decree or adjudication, a party may file exceptions to any order, decree or adjudication which would become a final appealable order under Pa.R.A.P. 341(b) or 342 following disposition of the exceptions. If exceptions are filed, no appeal shall be filed until the disposition of exceptions except as provided in subdivision (d) (Multiple Aggrieved Parties). Failure to file exceptions shall not result in waiver if grounds for appeal are preserved as provided in subdivision (b) of this Rule.

(b) *Waiver.* Exceptions may not be sustained unless the grounds are specified in the exceptions and were raised by petition, motion, answer, claim, objection, offer of proof or other appropriate method.

(c) *Time for Filing Exceptions.* If a party files timely exceptions, any other party may file cross exceptions within ten (10) days after the filing of exceptions.

(d) *Multiple Aggrieved Parties.* Where more than one party is aggrieved by a final appealable order under Pa.

R.A.P. 341(b) or 342, a timely appeal filed by any party supersedes exceptions by any other party and the other shall be submitted directly to the appellate court.

(e) *Adoptions and Involuntary Terminations.* No exceptions shall be filed to any final order in involuntary termination or adoption matters under the Adoption Act, 23 Pa.C.S. Section 2501, et seq.

(f) *Time Limits for Decision on Exceptions.* The Orphans' Court shall decide exceptions including supplemental exceptions and cross exceptions within one hundred and twenty (120) days of the filing of the initial exceptions. If the Orphans' Court fails to decide the exceptions within one hundred and twenty (120) days, the exceptions shall be deemed denied by operation of law on the one hundred and twenty first (121st) day and the clerk is directed to enter the deemed denial on the docket as of that date. The appeal period shall begin to run as of the one hundred and twenty first (121st) day.

(g) *Exceptions.* Exceptions shall be the exclusive procedure for review by the Orphans' Court of a final order, decree or adjudication. A party may not file a motion for reconsideration of a final order.

(h) *Transcript of Testimony.* All exceptions shall contain a request designating a portion of the record to be transcribed in order to enable the court to dispose of the exceptions. Within ten days after the filing of the exceptions, any other party may file an objection requesting that an additional, lesser or different portion of the record be transcribed. If no portion is indicated, the transcription of the record shall be deemed unnecessary to the disposition of the exceptions. The trial judge shall promptly decide the objection to the portion of the record to be transcribed.

ORPHANS' COURT DIVISION RULE 10.2

Rule 10.2. Appeals From the Register of Wills.

(a) Form and Notice of Appeal

An appeal from a decree of the Register shall be made to the Court in a form substantially similar to Form A of this rule or on any substantially similar form.

Notice of such appeal shall be served on all interested parties or their counsel.

(b) Form of Petition

After an appeal has been taken to the Court from any decree of the Register, the appellant shall present a petition to the Court within thirty days after filing the appeal. Such petition shall specify the grounds upon which the appeal is based; shall set forth the names and addresses of all interested parties and the necessary jurisdictional facts; shall be signed by the appellant or appellant's counsel of record; and shall be filed with the Clerk. A copy of the decree of the Register and a copy of the appeal form shall be annexed to the petition. Thereupon the Court will award a citation to all interested parties to show cause why the appeal should not be sustained and the decision complained of set aside.

(c) Action Upon Default

When on appeal no petition is filed within thirty days, the appeal may be dismissed by the Court upon petition of any party in interest.

If the respondent fails to comply with the requirements of any citation or notice, the Court, upon proof of service thereof, shall make such order as may be just and necessary.

ORPHANS' COURT DIVISION RULE 12.7

Rule 12.7. Resignation and Discharge of Living Fiduciaries.

When a fiduciary has not completed the administration of the estate, the fiduciary's petition for leave to resign and be discharged shall set forth:

(a) The nature of the fiduciary capacity;

(b) The date and a reference to the record of the fiduciary's appointment and the names of the fiduciary's sureties, if any;

(c) The kind and value of the property remaining in the estate;

(d) Whether an account has been or will be filed; and

(e) The reason for the fiduciary's resignation.

The prayer shall be (i) for the acceptance of the resignation and an order directing payment and transfer of the remainder of the property in the fiduciary's hands to the fiduciary's successor; and (ii) for the discharge of the fiduciary and the fiduciary's sureties, if any, upon confirmation of the fiduciary's account.

The Court, with or without notice to the parties and with or without a hearing, may accept the fiduciary's resignation and direct the fiduciary to make payment and transfer of the assets of the estate to the fiduciary's successor and may require the fiduciary to state and file an account.

The proposed successor fiduciary and the representatives of persons not sui juris, if appointed, and any other interested person, may examine the assets of the estate and any account filed, and, when necessary, file objections. Upon consideration thereof and after audit and confirmation of the account, if filed, and proof that all taxes assessed have been paid or that provision has been made for their payment, the Court will decree a discharge of the accounting fiduciary and the fiduciary's sureties, if any, upon payment and transfer of the assets remaining in the hands of the fiduciary to the fiduciary's successor or as otherwise directed by the Court.

ORPHANS' COURT DIVISION RULE 12.9, 12.10 and 12.11

Rules 12.9, 12.10 and 12.11. Public or Private Sale or Options of Real Property; Mortgage or Lease of Real Property.

Any petition for leave to make a public or private sale of real property of a decedent or to mortgage, lease, or exchange real property, or to grant an option for the sale, lease, or exchange of real property under Sections 3351, 3352, 3353 or 3354 of the PEF Code shall set forth the following:

Sec. 1. Real Property.

(a) the name, residence and date of death of the decedent; whether the decedent died testate or intestate; the name and date of appointment of the personal representative; and the amount of bond given by the personal representative, if any;

(b) a description adequate to describe the real property involved, with the improvements thereon, how acquired by the decedent, its rental income or value, its value shown by the inventory, and, if the Pennsylvania transfer inheritance tax appraisal has been filed, its value as shown therein;

(c) the names of all parties interested as heirs, devisees, legatees, or lienholders who will be affected by the

granting of the petition, the interest of each, an indication of whether any of such are not sui juris, together with the names of their fiduciaries, if any:

(d) the names of the parties in interest consenting to the transaction;

(e) the reasons why the sale or other requested disposition of the real property is desirable for the proper administration and distribution of the estate; and

(f) the mortgages, if any, to be discharged by sale with the consent of the mortgagees;

When approval of a private sale, or an exchange, or an option is sought, then in addition to the requirements set forth in subparagraphs (a) through (f) immediately above, the petition shall set forth:

(g) the name of the proposed purchaser, purchase price, terms of the transaction and that, in the opinion of the petitioner, the price offered is better than can be obtained at public sale; and

(h) that the real property has been valued by at least two qualified real estate appraisers not personally interested in the proposed transaction.

When approval of a mortgage or lease is sought, then in addition to the requirements of subparagraphs (a) through (f) of Section 1 of this rule, the petition shall set forth the name of the person desiring to enter into the transaction, together with a summary of the terms of the instrument which the Court is requested to approve.

Sec. 2. Exhibits.

Exhibits to such petitions shall be attached in the following order:

(a) a copy of the will, if any;

(b) a certificate of the proper county authority showing the assessed value of the real property;

(c) the joinder of parties who consent to the transaction; and

(d) a copy of the inventory;

When approval of a private sale, or an exchange, or an option is sought, then in addition to the exhibits required by subparagraphs (a) through (d) immediately above, the following exhibits shall be attached:

(e) a copy of the contract of sale or other instrument which the Court is requested to approve; and

(f) copies of the affidavits of the appraisers or the appraisals which conform to the requirement of the PA. O.C. Rules.

When approval of a mortgage or lease is sought, then in addition to the exhibits required by subparagraphs (a) through (d) of this Section 2, a copy of the proposed mortgage or lease shall be attached as an exhibit.

Sec. 3. Notice.

If the property is located in Allegheny County, then public notice of a proposed public or private sale, or an exchange, or an option shall be given by advertisement once a week for three successive weeks in the daily editions of the *Pittsburgh Legal Journal* and in one newspaper of general circulation published in Allegheny County. If the property is not located in Allegheny County, then such public notice shall be given in the legal periodical, if any, of that county and in one newspaper of general circulation published in such county. In either case, public notice shall include the posting of at least

five notices of the proposed sale, exchange or option on and in the immediate vicinity of the premises to be sold, exchanged, or optioned.

Sec. 4. Bid Process.

On or before the return day of a public sale, the proofs of publication and of posting of notice, if required, shall be filed. On such return day, the Court will then open the sales to competitive sealed bidding or may permit competitive oral bidding in an open court or the Court may refer the matter to the Clerk and fix the time and place during the same day when the Clerk will offer the property at auction and make immediate return thereto to the Court. The successful bidder shall forthwith deposit cash or its equivalent with the personal representative in a sum not less than ten percent of the amount of the bid; the balance shall be paid as directed by the Court.

Sec. 5. Additional Security.

On or after the return day of a sale or other transaction hereunder, the Court shall fix the amount of the security or additional security which the personal representative shall be required to enter. If, however, the facts warrant and a stipulation is entered by the surety on any existing security accepting liability for the proceeds of the sale or other transaction, the Court may excuse the personal representative from entering security or additional security. The surety on any additional bond, except for cause shown, shall be the same as on the original bond. The bond shall be presented to the Court for approval.

Sec. 6. Similar Petitions.

Petitions of trustees under Secs. 7133, 7141 and 7142 of the PEF Code, petitions of guardians under Secs. 5152 and 5155 of the PEF Code, and petitions of guardians under Secs. 5521 and 5522 of the PEF Code, shall conform so far as possible to the provisions of this rule.

Sec. 7. Personal Property.

When a sale, pledge, mortgage, lease, exchange, or option of personal property requires the approval of the Court, then the petition for such approval shall conform so far as possible to the provisions of this rule.

ORPHANS' COURT DIVISION RULE 12.16A

Rule 12.16A. Small Estates.

Any petition for settlement of a small estate as authorized by the PEF Code shall set forth the following:

Sec. 1. Personality Only. When the estate of the decedent consists of personality only, the petition shall set forth the following:

(a) The name, date of death and domicile of the decedent; whether the decedent died testate or intestate; if testate, whether the will was probated; whether letters have been granted, and if so, on what date and to whom;

(b) The items of personal property owned by decedent and their values at the date of death;

(c) The names of all beneficiaries under the will, if any, as well as the names of decedent's next of kin if not named as beneficiaries under the will;

(d) The names of the surviving spouse and next of kin if decedent died intestate as to any personality;

(e) The names of any persons entitled to distribution who are not sui juris, with the names of their trustees or guardians and a reference to their appointment;

(f) When a family exemption is claimed:

(1) by whom the exemption is claimed;

(2) the name of the surviving spouse, if any, whether the family relationship was maintained, and whether the spouse has forfeited his or her rights;

(3) if children of the decedent are claiming the exemption, then the names of all children and whether such children were members of the same household as the decedent at death, indicating any who are not sui juris, or if there are no such children, the names of the parent or parents of the decedent who were members of the same household as decedent at death;

(4) a description of the property claimed and the gross value thereof;

(5) whether there is any objection to the claim, and if so, by whom;

(g) An itemized list of unpaid administrative expenses, preferred debts, and taxes, including those due to the Commonwealth;

(h) An itemized list of all claims and whether or not admitted;

(i) The names of all next of kin and legatees under the will, if any, not joining in the petition.

Exhibits shall be attached in the following order:

(1) A copy of the will, if any;

(2) The joinder of all next of kin, legatees, creditors, sureties on any administrator's bond, and any others interested in the decedent's estate, who consent to the granting of the petition;

(3) A receipt or statement from the agent of the Commonwealth showing that the Pennsylvania inheritance tax has been paid in full, or such agent's consent to the granting of the petition; and

(4) An itemized list of all disbursements made prior to filing the petition, specifying the date, amount, payee and purpose of each disbursement.

Sec. 2. Realty. When the estate of the decedent consists of personalty and realty or realty only, then in addition to the information required by Section 1 of this Rule, the petition shall set forth the following:

(a) The date of the first complete advertisement of the letters, and the amount of bond, if any; and

(b) The names of all devisees under the will, if any.

In addition to the exhibits required by Section 1 of this Rule, the petitioner shall attach proof of advertising as an exhibit to the petition.

ORPHANS' COURT DIVISION RULE 12.16B

Rule 12.16B. Sales of Real Estate; Additional Security or Waiver Thereof.

Sec. 1. In the case of a personal representative who has been required to give bond, the petition for an order requiring additional security or excusing such personal representative from entering additional security under the applicable provisions of the PEF Code, shall set forth the following:

(a) the name, residence, and date of death of decedent; whether the decedent died testate or intestate; the name of the personal representative and the date of appointment;

(b) the amount of the bond filed with the Register and the name of the surety thereon;

(c) a description adequate to identify the real estate to be sold and the improvements thereon;

(d) the name and address of the purchaser and the price to be paid;

(e) the names of all parties in interest and whether or not they are sui juris.

When an order excusing the entry of additional security is requested, or when security previously entered is to be used to secure in whole or in part the proceeds of the sale referred to in the petition, there shall be attached to the petition a stipulation signed by the surety on the existing bond accepting liability for the proceeds of the real estate to be sold.

Sec. 2. Exhibits.

Exhibits to such petitions shall be attached in the following order:

(a) a copy of the will, if any;

(b) a copy of the inventory, if filed;

(c) a copy of the agreement of sale; and

(d) consents, if any, of the parties in interest.

Sec. 3. Surety.

Except for cause shown, the surety on the bond of the personal representative at the time of appointment shall be surety on any additional bond.

Sec. 4. Form of Additional Bond.

When an additional bond is required, or a personal representative is excused from entering additional security, an order of Court in substantially the following form shall be annexed to the petition:

And now, this ____ day of ____, 20 __, upon consideration of the annexed petition and on motion of ____, it is ordered, adjudged, and decreed that _____, _____ of the estate of _____,

(Personal Representative) deceased, enter in the office of the Register of Wills additional security in the amount of \$_____, with _____ as surety and, upon the entry of the same, the said _____ is authorized to receive the

(Personal Representative) proceeds of the sale of the real estate known as _____, _____ Pennsylvania as the (Number, Street and Municipality) same is more fully described in the Petition.

Sec. 5. Petition of Trustees.

Petitions of trustees relating to the posting or excusing of security or additional security under the applicable provisions of the PEF Code shall conform substantially to the foregoing provisions of this rule.

ORPHANS' COURT DIVISION RULE 12.16C

Rule 12.16C. Minors; Allowances.

A petition for allowance pursuant to Section 5164 of the PEF Code, shall set forth:

(a) the name, address and age of the minor, the person with whom the minor resides, and the date of appointment and qualification of the minor's guardian;

(b) the names and addresses of the minor's living parents, their incomes and whether their incomes are sufficient to support and maintain their children;

(c) the present net value and kind of the minor's estate, whether real or personal, the net income therefrom during the six months preceding the petition, and any other information respecting principal and income which

may be of advantage to the Court in fixing the amount to be authorized for the specific purpose;

(d) whether any person has made any provision by will or otherwise for the education and support of the minor and, if so, a copy thereof;

(e) all previous allowances by decree;

(f) the school or institution which it is proposed the minor shall attend and how the desired allowance shall be paid; and

(g) a recommendation to the Court of an amount that should be allowed.

ORPHANS' COURT DIVISION RULE 12.16D

Rule 12.16D. Termination of Trusts.

A petition for the termination of a trust in whole or in part, and for the transfer of personal property and conveyance of real estate held in trust, to the appropriate persons shall set forth the following:

(a) the name and residence of the testator or settlor, the terms of the trust, and any known reason, not expressed in the deed, trust instrument or will, why the trust was created;

(b) the names and address of all parties who are or possibly may be parties in interest, whether they are sui juris, and if they are not sui juris, the names of their fiduciaries, if any;

(c) a description of all property impressed with the trust and whether it has been affected by an election or any other act or proceeding which would necessitate the termination of the trust;

(d) the names of all parties who have consented to the termination, and the names of all parties who have not consented to the termination; and

(e) the reason why the trust should be terminated and the absence of any reason for its continuance.

ORPHANS' COURT DIVISION RULE 12.16E

Rule 12.16E. Change of Situs of Trust.

Sec. 1. Petitions. An application for transfer of situs of any testamentary or inter vivos trust shall be by petition of a trustee or any party in interest. The petition shall set forth the following:

(a) the name of the decedent or settlor and the date of the establishment of the trust estate;

(b) the names and addresses of all fiduciaries;

(c) the names and addresses of all parties in interest and whether they are sui juris and join in the prayer of the petition;

(d) a statement whether all taxes due the Commonwealth and its political subdivisions have been paid or provided for;

(e) a brief statement of the reasons why the change of situs is necessary or desirable;

(f) the name and address of a successor trustee or trustees, if appropriate, and the court which will have jurisdiction over the trust;

(g) the place where the trust instrument is recorded; and

(h) a statement of what actions will be taken in the other jurisdiction causing the appropriate court located therein to accept jurisdiction of the trust.

Sec. 2. Exhibits. Exhibits shall be attached in the following order:

(a) a copy of the instrument and all amendments thereto which created the trust;

(b) joinder of all parties who consent;

(c) acceptance of successor trustee or trustees;

(d) if the successor trustee is a corporation, a certificate of the appropriate official that the proposed trustee is authorized to transact trust business and the most recent statement of condition, including trust assets being administered;

(e) a copy of the order of the court in the new situs accepting jurisdiction over the trust.

ORPHANS' COURT DIVISION RULE 12.16F

Rule 12.16F. Compromise or Settlement of Survival Actions.

Sec. 1. Petitions.

Whenever a personal representative, who has a right of action to recover damages under the Survival Statutes and who has not brought suit, wishes to compromise or settle such a claim, whether or not any claim has been made for damages under the Wrongful Death Statute, the personal representative shall present his petition to the Orphans' Court Division for approval of the compromise or settlement. The petition shall contain the following averments:

(a) the name, age, state of health, residence and date of death of the decedent and whether the decedent died testate or intestate;

(b) the name of the personal representative, the date of the personal representative's appointment, that letters were granted and duly advertised, and the amount of bond, if any;

(c) the occupation of the decedent at the time of the decedent's death, the salary and average earnings, the name of the decedent's employer and address if the decedent was not self-employed;

(d) the names of all heirs or next of kin (noting those dependent upon the decedent) and whether they are sui juris, together with the names of their guardians, if any;

(e) the names and addresses of all creditors who have or had claims against the estate, whether or not they have been paid, and, if paid, by whom;

(f) a brief recital of the facts constituting the cause of action;

(g) a statement of reason for the proposed compromise or settlement, the amount thereof, including the amount of counsel fees and legal expenses, and the proposed apportionment between the survival action and the wrongful death action, if any; and

(i) that notice of the presentation of the petition has been given to all parties in interest who do not join.

The prayer of the petition shall be for approval of the compromise or settlement.

Sec. 2. Exhibits.

The following exhibits shall be attached to the petition:

(a) a copy of the will, if any;

(b) an affidavit of service of notice;

(c) the joinder of all parties who consent.

Sec. 3. Hearing.

When the averments of the petition require it, the Court upon its own motion or upon the request of any party in interest, will set a date for hearing.

Sec. 4. Distribution.

Distribution of the amount received in compromise or settlement of a survival action shall be made in accordance with Rule 6 or Rule 12.16A of these Rules.

ORPHANS' COURT DIVISION RULE 12.16G**Rule 12.16G. Petition to Settle Claims.***Sec. 1. Contents of Petition.*

Where no action has been instituted, a petition by a guardian of a minor (as the term "guardian" is defined under Pa. R.C.P. 2026) for authority to settle a claim for damages proposed to be paid to the estate of a minor shall be verified by the guardian of the minor, shall contain a statement of the nature of the evidence relied upon to show liability, the elements of damage, the injuries sustained, and the list of expenses incurred or to be incurred. The petition shall be accompanied by the following exhibits:

(a) A statement by counsel as to such counsel's professional opinion regarding the desirability of the settlement and reasons therefor, a description of the services rendered, a description and the amount of reimbursable expenses requested, and the amount of fees requested, which, except in extraordinary circumstances, shall not exceed 33-1/3 percent of the present value of a structured settlement or 33-1/3 percent of the gross recovery of any other settlement;

(b) A statement by the attending physician as to the injuries sustained by the minor, treatment administered and the prognosis; and

(c) In property damage claims, a statement by the party who made the repairs or appraised the loss.

Sec. 2. Deposit of Funds by Order of Court.

All petitions under this Rule where the proceeds of settlement are to be deposited in a savings account or in a certificate of deposit, shall have attached to the petition an order including the following:

It is hereby ordered and decreed that the amount of \$ _____ shall be deposited in the name of _____, a minor, by counsel of record in a savings account or certificate of deposit in a federally insured bank, savings and loan association or credit union. The savings account or certificate of deposit shall be marked "NOT TO BE WITHDRAWN UNTIL THE MINOR REACHES THE AGE OF MAJORITY OR BY FURTHER ORDER OF COURT."

Sec. 3. Settlement of Filed Action.

For approval of a minor's claim where an action has been instituted, see Allegheny County Civil and Family Division Rule 2039.

ORPHANS' COURT DIVISION RULE 12.16H**Rule 12.16H. Corporations Serving as Fiduciaries.***Sec. 1. Petitions.*

Subject to the provisions of Section 6 of this Rule 12.16E, a petition of a corporation organized under the laws of the Commonwealth or of the United States having fiduciary powers, doing business for one year or longer and desiring to exercise fiduciary powers, shall set forth the following:

(a) the corporate name, the location of its business, the statutory authority for its existence, the date and purpose of its incorporation, any changes therein and the number of years it has been in operation;

(b) the names and addresses of its executive officers and directors and the stock in the petitioner held by each;

(c) the interest, direct or indirect, which the petitioner has in the capital stock of any other corporation organized for the conduct of a similar business; and the name of any corporation or group of allied persons or both holding or controlling a majority of the stock of the petitioner;

(d) if the petitioner is a national banking association, the grant of fiduciary powers to it by the Comptroller of the Currency;

(e) that the petitioner will make a deposit of the sum of \$500 with the Clerk on presentation of the petition, to be used so far as necessary to pay the fees of the Examiner of Fiduciaries and will make any further deposit in excess thereof that may be ordered by the Court; and

(f) the passage of a resolution by the board of directors of the petitioner providing:

(i) that it will submit to a preliminary examination of all its books, assets and liabilities, and, if approved, will submit to all other examinations directed by the Court and will pay all costs and expenses of examination fixed by the Court;

(ii) that fiduciary funds and investments under the control of the Court will not be mingled with assets owned by the petitioner or other assets in which it has any interest except as fiduciary,

(iii) that investments made by the petitioner as fiduciary shall be so designated that the estate or trust to which such investments belong shall be clearly shown;

(iv) that uninvested capital trust funds and income to be invested shall be segregated and designated as directed by applicable state and federal law;

(v) that it will submit to the Court in January and July of each year a statement duly verified showing its financial condition at the close of business on December 31st and June 30th of each year in the form required by the Examiner of Fiduciaries;

(vi) that it accept the provisions of the Acts of Assembly relating to corporate fiduciaries now or hereafter in existence, and of all orders and rules of court relating to the petitioner;

(vii) that the petitioner will not become surety on any bond, except as otherwise allowed by law;

(viii) that designated officers will execute any and all petitions, writings and obligations necessary in the exercise of fiduciary powers and that their names and any changes therein will be filed of record with the Examiner of Fiduciaries;

(ix) that its counsel of record shall be the agent of the petitioner to receive all notices issuing from the Court; and

(x) that the gross amount loaned by it to all its officers and directors and to the firms or houses in which they may be interested, directly or indirectly, shall not exceed the amount allowed by applicable state and federal law.

(g) whether the petitioner has applied to any other court in Pennsylvania for approval to exercise fiduciary powers, and the results of any such applications.

Sec. 2. Exhibits.

Exhibits shall be attached in the following order:

(a) a certified copy of its charter, amendments and renewals;

(b) the approval of the State Banking Department or a certified copy of the certificate from the Comptroller of the Currency granting it the right to exercise fiduciary powers;

(c) a certified copy of the resolution of the petitioner embodying the allegations of Section 1(f), of this Rule;

(d) a current financial statement of the petitioner showing its total assets and liabilities in the form required by the Secretary of Banking or the Comptroller of the Currency; and

(e) the certificate of approval, or order for authority to exercise fiduciary powers by the Court of Common Pleas of the county where the corporate petitioner's principal office is located as well as all certificates of approval or orders for authority to exercise fiduciary powers which have been issued by any other court of any other county in Pennsylvania.

Sec. 3. Officer's Oath to Petition—Records for Examiner.

The petition shall be sworn to by an officer of the petitioner authorized by resolution. When the petition is presented to the Court, counsel shall deliver to the Examiner:

(a) a certified copy of the last report of the petitioner's examination by the Secretary of Banking or the Comptroller of the Currency; and

(b) a copy of the petitioner's by-laws.

Sec. 4. Preliminary Order.

Upon presentation of the petition, a preliminary order will be made in the following form:

And now, this ____ day of _____, 20 __, the within petition having been presented in open Court, upon consideration thereof it is ordered, adjudged and decreed that the petition be referred to _____, Examiner of Fiduciaries, who is directed to make a report thereon to the Court.

Sec. 5. Final Order.

After examination and report by the Examiner and consideration by the Court, a final order of approval may be made in the following form:

And now, this ____ day of _____, 20 __, it appearing to the Court that the petition of _____, a corporation, for authority to exercise fiduciary powers, was presented in open Court and referred to _____, Examiner, who has filed a report, and it further appearing from such petition and report that the petitioner has complied with the applicable laws and the rules of this Court, and has subjected itself to all orders and rules of this Court hereafter to be made, upon motion of _____, counsel for petitioner, it is ordered, adjudged and decreed that _____ be and is hereby authorized to act as fiduciary, when designated, chosen or appointed according to law.

Sec. 6. Suspension of Rule with Respect to Certain Corporations or Entities

The application of this Rule shall be suspended with respect to corporations or entities desiring to exercise fiduciary powers in Allegheny County, Pennsylvania, if such corporation or entity is one of the following:

(a) a national bank authorized to exercise fiduciary powers pursuant to 12 U.S.C. 92(a) and to perform fiduciary services in this Commonwealth;

(b) a bank, a bank and trust company, a trust company or to the extent provided under the Pennsylvania Banking Code of 1965, a savings bank which is authorized to perform fiduciary services under Section 106 of the Pennsylvania Banking Code of 1965;

(c) a federal savings bank which is authorized to exercise trust powers by the Office of Thrift Supervision pursuant to 12 U.S.C. § 1464(n); or

(d) a bank, a bank and trust company, a trust company or savings bank which is regulated by the Office of Thrift Supervision, chartered under laws of another state or territory of the United States and satisfies the requirements of Section 106(b) of the Pennsylvania Banking Code of 1965.

Such corporation or entity shall submit to the Orphans' Court a copy of its charter, and for corporations or entities described under subsection (d) above an approval letter from the Pennsylvania Department of Banking under Section 106.

Corporations or entities qualifying under any of the above requirements need not comply with the requirements of this Rule, but shall file annually with the Court a statement that they continue to be authorized to exercise fiduciary powers by their governing regulatory entity. In the event the corporation or entity has its authorization to exercise fiduciary powers revoked or suspended, the Court shall be immediately notified.

ORPHANS' COURT DIVISION RULE 12.16I**Rule 12.16I. Surety Companies.***Sec. 1. Petitions.*

A petition of a surety company, whether a stock company or a mutual company, having a capital and surplus of not less than \$4,000,000.00, with a minimum paid-in capital of \$1,000,000.00, to become surety on bonds of fiduciaries shall set forth in the following order:

(a) the corporate name, the location of its business, the statutory authority for its existence, the date and purpose of its incorporation, any changes therein, and the number of years it has been in operation;

(b) the amount, if any, of its capital stock, how paid, the number of shares issued and par value thereof;

(c) the amount of its capital and surplus;

(d) the names and addresses of its officers (excluding assistant officers), and directors and the ownership interest in the petitioner held by each;

(e) the interest, direct or indirect, which the petitioner has in the capital stock of any other corporation organized for conducting a similar business; and the name of any corporation or group of allied persons or both holding or controlling a majority of the stock of the petitioner;

(f) whether the petitioner has assumed or underwritten policies issued by any other company and in force at the date of its petition;

(g) the provision made to protect itself from excessive losses in the event of a catastrophe under employers' liability or workers' compensation contracts or otherwise;

(h) that on presentation of the petition, the petitioner will deposit a sum determined by the Court, to be used as

far as necessary to pay the fees of an examiner and will make any further deposit in excess thereof that may be ordered by the Court;

(i) the passage of a resolution by the board of directors of the petitioner providing:

(1) that it will submit to a preliminary examination of its books, assets and liabilities and, if approved, will submit to all other examinations ordered by the Court and will pay all costs and expenses of examination fixed by the Court;

(2) that fiduciary property coming into its custody will not be taken out of the jurisdiction of the Court but will be managed and controlled by the company subject to orders of the court;

(3) that no suretyship will be accepted in any sum greater than allowed by any Act of Assembly of Pennsylvania;

(4) that it will submit to this Court not later than the first week of March of each year a statement duly verified showing its financial condition at the close of business on December 31st preceding, in the form required by the Insurance Commissioner of the Commonwealth of Pennsylvania, together with a sworn or certified copy of the annual renewal certificate when issued by the Insurance Commissioner of Pennsylvania, permitting the transaction of its business within the Commonwealth;

(5) its acceptance of the provisions of the Acts of Assembly of Pennsylvania relating to surety companies now or hereafter in existence and to all final orders of court relating to the petitioner;

(6) that the names of its officers or agents authorized to execute petitions, writings, and obligations on its behalf, and any changes therein, will be filed of record in the Court with the Examiner of Fiduciaries; and

(7) that its counsel of record shall be the agent of the petitioner to receive all notices issuing from the Court.

Sec. 2. Exhibits.

Exhibits shall be attached in the following order:

(a) a certified copy of its charter with amendments and renewals;

(b) a certificate of authority to do business in Pennsylvania issued by the Insurance Commissioner;

(c) a certified copy of the resolution of the petitioner embodying the allegations of clauses (1), (2), (3), (4), (5), (6), and (7) of Sec. 1(i) of this rule;

(d) a financial statement of the petitioner showing its total assets and liabilities in the form required by the Insurance Commissioner of Pennsylvania; and

(e) a certified copy of the certificate appointing the Insurance Commissioner of Pennsylvania attorney in fact for the petitioner.

Sec. 3. Officer's Oath to Petition. Records for Examiner.

The petition shall be sworn to by an officer of the petitioner authorized by resolution to do so. When the petition is presented to the Court, counsel shall deliver to the Examiner:

(a) a copy of the last report of the petitioner made to the Insurance Commissioner of any state;

(b) a certified copy of the last report of examination by the Insurance Commissioner of any state; and

(c) a copy of the petitioner's by-laws.

Sec. 4. Preliminary Order.

Upon presentation of the petition a preliminary order will be made in the following form:

And now, _____, 20 __, the within petition having been presented in open court, upon consideration thereof it is ordered, adjudged, and decreed that the petition be referred to _____, Examiner of Fiduciaries, who is directed to make a report thereon to the Court.

Sec. 5. Final Order.

After examination and report by the Examiner and consideration by the Court, a final order of approval may be made in the following form:

And now, this ____ day of _____, 20 __, it appearing to the Court that the petition of _____, a corporation, for authority to become surety on bonds or undertakings, was presented in open Court and referred to _____, Examiner, who has filed a report, and it further appearing from such petition and report that the petitioner has complied with the applicable laws and with the rules of this Court and has subjected itself to all orders and rules of this Court hereafter to be made, upon motion of _____, counsel for petitioner, it is ordered, adjudged, and decreed that _____ be and is hereby authorized to become surety on bonds or undertakings permitted or required by law.

Sec. 6. Annual Examination Fee.

Every surety company, after approval by the Court, shall annually deposit with the Clerk a sum determined by the Court for the expenses of examination of the annual records required to be submitted under Sec. 1(i)(4) in addition to the expense of any other examination which may be required.

ORPHANS' COURT DIVISION RULE 14

Rule 14. Incapacitated Persons; Guardians.

Sec. 1. Petition Contents.

(a) A petition for the appointment of a guardian of the estate or person of an alleged incapacitated person shall set forth:

(1) the name, age, residence and post office address of the alleged incapacitated person;

(2) the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person;

(3) the name and address of the person or institution providing residential services to the alleged incapacitated person;

(4) the names and addresses of other service providers;

(5) the name and address of the person or entity whom petitioner asks to be appointed guardian;

(6) an averment that the proposed guardian has no interest adverse to the alleged incapacitated person;

(7) the reasons why guardianship is sought;

(8) a description of the functional limitations and physical and mental condition of the alleged incapacitated person;

(9) the steps taken to find less restrictive alternatives;

(10) the specific areas of incapacity over which it is requested that the guardian be assigned powers; and

(11) the qualifications of the proposed guardian.

(12) If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and the net income of the alleged incapacitated person from all sources to the extent known;

(13) the potential for conflict with regard to the issue of who will be appointed as guardian and with regard to the issue of capacity;

(14) the current status of the alleged incapacitated person (i.e. unconscious, unable to communicate due to a stroke, combative, etc.); and

(15) If an emergency guardian is sought, the petition shall also include an indication as to whether or not the condition of the alleged incapacitated person is one that will or will not be remedied within the first 72 hours.

(b) A consent, signed by the proposed guardian, shall be attached to the petition in which the proposed guardian shall agree to act as guardian of the person or the estate of the alleged incapacitated person if appointed by the Court and shall state that the proposed guardian has no interest adverse to that of the alleged incapacitated person and is not a fiduciary of any estate, trust or similar fund in which the alleged incapacitated person has an interest.

(c) The petition shall conclude with a prayer for the appointment of a guardian of the estate or person or both of the alleged incapacitated person and for the award of a citation directed to the alleged incapacitated person to show cause why he should not be adjudged an incapacitated person and why a guardian should not be appointed.

Sec. 2. Preliminary Order; Notice; Service.

(a) Upon presentation of a petition for the appointment of a guardian, the Court will enter a preliminary order awarding the citation prayed for. The form of the preliminary order shall be substantially as set out in the appendix to this Rule.

(b) Written notice of the petition and hearing, to which shall be attached the citation and a copy of the petition and preliminary order, shall be provided to the alleged incapacitated person. The written notice shall be in large type and in simple language and shall indicate the purpose and seriousness of the proceeding, the rights that can be lost as a result thereof, the date, time and place of the hearing, and that the alleged incapacitated person has the right to request the appointment of counsel, to have counsel appointed if the Court deems it appropriate, and to have such counsel paid for if it cannot be afforded. The form of written notice shall be substantially as set out in the appendix to this Rule.

(c) Personal service of the written notice, petition, citation and preliminary order shall be made on the alleged incapacitated person and the contents and terms of the petition shall be explained to such person to the maximum extent possible in language and terms the individual is most likely to understand. Service shall be no less than 20 days in advance of the hearing. In addition, notice of the petition and hearing shall be given in such manner as the Court shall direct to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the Court may direct, including other service providers. An Affidavit of Service shall be filed on or before the day of hearing.

Sec. 3. Notice of Retention of Counsel.

(a) Counsel retained by the person alleged to be incapacitated in a petition under 20 Pa.C.S.A. § 5511(A) shall enter an appearance and shall provide a copy thereof to the petitioner at least seven (7) days prior to the date set for hearing as set out in the appendix to this Rule.

(b) If petitioner does not receive notice under Sec. 3(a) that counsel has entered an appearance on behalf of the alleged incapacitated person, petitioner shall notify the Court in writing at least seven (7) days prior to the date set for hearing that the alleged incapacitated person is not represented by counsel as set out in the appendix to this Rule.

Sec. 4. Hearing.

At the time fixed for the hearing on the petition, testimony shall be submitted in support of the petition (See 20 Pa.C.S.A. §§ 5512.1, 5518 and 5518.1). The alleged incapacitated person shall be present in court at such hearing unless (1) the Court is satisfied, upon the deposition or testimony of, or sworn statement by a physician or licensed psychologist, that his physical or mental condition would be harmed by his presence; or (2) it is impossible for him to be present because of his absence from the Commonwealth.

Sec. 5. Appointment of Guardian.

(a) *Findings.* In all cases, the Court, upon presentation of proper proof, shall consider and make specific findings of fact as required by 20 Pa.C.S.A. § 5512(A).

(b) *Final Orders.* The Court shall determine whether a plenary or limited guardian of the person or estate of the alleged incapacitated person is required. The forms of final orders for the appointment of plenary and limited guardians are set out in the appendix to this Rule.

Sec. 6. Emergency Guardians.

(a) *Petition.* A petition for the appointment of an emergency guardian of the person or estate of the alleged incapacitated person shall both set forth the information required in 20 Pa.C.S.A. § 5511(E) and Sec. 1 of this Rule and shall be subject to the provisions of 20 Pa.C.S.A. § 5511 (including those relating to notification concerning the right to counsel and the appointment of such counsel for the alleged incapacitated person), unless the Court directs in its order setting the time of the emergency hearing that the preparation and inclusion of such information is not feasible under the circumstances. Such emergency petitions must, however, contain facts and information sufficient to enable the Court to determine that: 1) the person allegedly lacks capacity; 2) is in need of the appointment of an emergency guardian; and 3) the failure to make such appointment will result in irreparable harm to the person or estate of the alleged incapacitated person.

(b) *Citation.* Upon presentation of an appropriate petition for the appointment of an emergency guardian of the person or estate of an alleged incapacitated person, the Court will enter an order awarding a citation, subject to the provisions of 20 Pa.C.S.A. § 5511(A), and will direct such notice as it shall determine to be feasible in the circumstances to persons appearing to be entitled to such notice. In addition to fixing a return day for the filing of a written answer to the petition (though such written answer shall not be mandatory), the order shall also fix a time and place for hearing on the petition. The citation, together with written notice of the Petition, to which shall be attached a copy of the petition and the order, shall be served personally upon the alleged incapacitated

person prior to the hearing. The forms of orders for the setting of a hearing upon a petition for appointment of an emergency guardian of the person or the estate of an alleged incapacitated person shall be substantially as provided in the appendix to this Rule.

(c) *Hearing.* At the time fixed for hearing on the petition for appointment of an emergency guardian, testimony shall be submitted in support of the petition (See 20 Pa.C.S.A. §§ 5513 and 5518). The alleged incapacitated person shall be present at the hearing unless: 1) the Court is satisfied, upon the deposition, testimony or sworn statement by a physician or licensed psychologist, that his physical or mental condition would be harmed by his presence, or 2) it is impossible for him to be present because of his absence from the Commonwealth.

(d) *Appointment of Emergency Guardian.* Upon proper proof, the Court shall make a finding of incapacity and appoint an emergency guardian of the person or estate, or both, pursuant to 20 Pa.C.S.A. §§ 5512.1 and 5513 and, if the petition is for the appointment of an emergency guardian of the estate, will fix the amount of the surety bond, if any, to be filed by the guardian. The required bond must be submitted to the Court for approval and filed in the Clerk's office before the order of appointment will be released by the Court. The emergency guardian of an alleged incapacitated person shall have only and be subject to such powers, duties, and liabilities and serve for such time as the Court in its order of appointment shall direct. The forms of orders of appointment of an emergency guardian shall be substantially as provided in the appendix to this Rule.

Sec. 7. Inventory.

Within three months after the real or personal property of the incapacitated person comes into his possession or as otherwise ordered by the Court, a guardian of the estate of an incapacitated person shall verify by oath and file with the Clerk an inventory and appraisal of personalty and a statement of real estate, and a statement of any real or personal property which the guardian expects to acquire thereafter.

Sec. 8. Reports Required of Guardian.

(a) Each guardian of an incapacitated person shall file a report with the Court at least once within the first twelve (12) months of his appointment or such earlier time as may be set by the Court and at least annually thereafter.

(b) The annual report of a guardian of the estate of an incapacitated person shall include:

(1) Assets held by the guardian and the current value thereof.

(2) All receipts and disbursements of principal and income since the date of appointment of the guardian, or, if later, since the date of the last annual report. The report shall identify expenditures which have been made since the date of appointment or, if later, the date of the last annual report, pursuant to any order for an allowance under 20 Pa.C.S.A. § 5536, or otherwise for the housing, maintenance, support medical expenses, rehabilitation, education and other needs of the incapacitated person.

(3) The estimated annual income of the assets held by the guardian and from other sources.

(4) Subject to the foregoing, an annual report may be in the form prescribed for Accounts of Guardians of the Estates of Minors under Orphans' Court Rule 6.

(5) Notice of the filing of the annual report by the guardian of an estate shall be provided to the guardian's surety, the guardian of the person if someone other than the guardian of the estate, the incapacitated person and his or her counsel, if any, and such other interested parties as the Court may direct.

The form of the Report of a guardian of the estate shall be substantially as set out in the appendix to this Rule.

(c) Within sixty (60) days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian of the estate of such incapacitated person shall file a final report with the Court. The final report shall be in the form prescribed for accounts of guardians of the estates of minors under Rule 6 of this Court and shall cover the period from the date of the appointment of the guardian of the estate to the date of death of the incapacitated person or the adjudication of capacity. Such final report shall be filed as an account of the guardian in the office of the Clerk as provided by 20 Pa.C.S.A. § 5532 and the practice and procedure concerning the filing and audit of such account, reviews, distribution and rights of distributees shall conform to the practice and procedure governing the account of a guardian of a minor as set forth in 20 Pa.C.S.A. § 5533 and Rule 6 of this Court.

(d) The annual report of guardian of the person of an incapacitated person shall include:

(1) Current address, type of placement and living arrangements of the incapacitated person, e.g.: private home, personal care facility, hospital, institution, etc.

(2) Major medical or mental problems of the incapacitated person.

(3) A brief description of the social, medical, psychological and other support services the incapacitated person is receiving.

(4) The opinion of the guardian as to whether the guardianship should continue or be terminated or modified, and the reasons therefor.

(5) The number and length of times the guardian visited the incapacitated person in the past year.

The form of the report of a guardian of the person shall be substantially as set out in the appendix to this Rule.

(e) Within sixty (60) days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian of the person shall file a final report with the Court, providing the address and type of placement of the incapacitated person as of the date of death or adjudication of capacity, number and length of times the guardian visited the incapacitated person since the last report, and the reason why the report is being filed. The form of the final report of the guardian of the person shall be substantially as set out in the appendix to this Rule.

Sec. 9. Petition for Allowance.

A petition under 20 Pa.C.S.A. § 5536 for an allowance from the incapacitated person's estate during incapacity, may be presented by the guardian or any interested party. The petition shall set forth:

(a) the name of the guardian and the date of the guardian's appointment; if the petitioner is not the guardian, the petitioner's relationship to the incapacitated person or the nature of the petitioner's interest;

(b) the nature and present value of the incapacitated person's estate and the net annual income therefrom;

- (c) the address of the incapacitated person;
- (d) the names and addresses of the incapacitated person's dependents, if any;
- (e) a statement of all claims of the incapacitated person's creditors known to the petitioner;
- (f) all previous allowances by decree; and
- (g) a prayer for the allowance requested.

No order for an allowance out of an incapacitated person's estate shall be made without prior notice to the incapacitated person's guardian, if any.

Sec. 10. Sales, Mortgages, Leases, Exchanges and Options.

A petition for a sale, mortgage, lease, exchange or option of an incapacitated person's real or personal property shall comply with 20 Pa.C.S.A. §§ 3353, 5155, and 5521(B), and the applicable provisions of Rules 12.9, 12.10 and 12.11 of this Court.

Notice of a sale or other transaction under this section shall be given to all persons who are sui juris and would be entitled to share in the estate of the incapacitated person if the incapacitated person died intestate at the time the petition is presented.

Sec. 11. Small Estates.

(a) When the entire real and personal estate, wherever located, of a resident or non-resident alleged incapacitated person has a gross value of \$25,000 or less, a petition to have him adjudged incapacitated shall be filed in the form prescribed in Sec. 1 of this Rule except that the appointment of a guardian of his estate shall not be requested. After the hearing on such a petition and upon presentation of the required evidence, the Court will make a finding of incapacity as to the alleged incapacitated person and may authorize the person or institution maintaining the person to receive and hold or dispose of the property of the person without the appointment of a guardian or the entry of security.

(b) Without the appointment of a guardian, any amount in cash of a resident or non-resident incapacitated person may be ordered by the Court to be deposited in one or more savings accounts in the name of the person in banks, building and loan associations or savings and loan associations insured by a federal government agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured. Every such order shall contain a provision that no withdrawal can be made from any such account except as authorized by order of Court.

Sec. 12. Foreign or Successor Guardian.

(a) A foreign guardian shall file an exemplification of the record of the foreign guardianship in the office of the Register of Wills and thereafter a petition with the Court requesting full faith and credit to be given to the foreign adjudication of incompetency. The Court will enter a preliminary order awarding a citation directed to the alleged incapacitated person and providing that at least twenty days' written notice of the proceeding be given to all persons appearing to be entitled to such notice. In addition to fixing a return day for the citation, the order shall also fix a time and place for hearing on the petition. The citation, together with a copy of the petition and order, shall be served personally on the alleged incapacitated person. Notice to other persons shall be given personally or by registered or certified mail. The forms of preliminary and final orders as approved by the Court are as provided in the appendix to these Rules.

(b) The Court, after such notice to parties in interest as it shall direct, may without a hearing appoint a succeeding guardian to fill a vacancy in the office of guardian or may appoint a co-guardian of the estate of an incapacitated person. Where the vacating guardian was a parent who is now deceased, any testamentary nominee of the parent shall be given preference by the court.

Sec. 13. Distribution of Principal (Estate Plan).

In all petitions brought under 20 Pa.C.S.A. § 5536(b), the Court will appoint a guardian ad litem to represent the interests of the incapacitated person at the hearing on the petition.

Alternate

In all petitions brought under 20 Pa.C.S.A. § 5536(b), petitioner shall (1) request the Court to appoint a guardian ad litem to represent the interests of the incapacitated person in the proceedings, or (2) assert facts and circumstances as to why such guardian need not be appointed.

TABLE OF APPENDICES

Note: The Table of Appendices and forms have not been reproduced in this publication.

ORPHANS COURT DIVISION RULE 15

Rule 15. Adoption.

Sec. 1. Venue.

A proceeding for voluntary relinquishment, involuntary termination of parental rights, confirm consent to adoption, or adoption may be brought in the County of Allegheny if the parent or parents or the adoptee or person or persons who have filed a report of intent to adopt, reside in Allegheny County, or if an office of an agency having custody of or having placed the adoptee is located therein. Such a proceeding may also be brought with leave of Court in Allegheny County if the adoptee formerly resides in Allegheny County.

Sec. 2. Parties.

Any individual may be adopted, regardless of his age or residence. Any individual may become an adopting parent. Parent includes adoptive parent.

Sec. 3. Voluntary Relinquishment. Relinquishment to Agency. Petition.

(a) A petition of a parent or parents for permission to relinquish forever all parental rights and duties with respect to a child under the age of eighteen years who has been in the care of an agency for a minimum period of three (3) days, or, whether or not the agency has the physical care of the child, the agency has received a written notice of the present intent to transfer to it custody of the child, executed by the parent, shall contain the following information:

- (1) The name and address of petitioner and identity, i.e., parent.
- (2) The name, address, age, racial background and religious affiliation of the parent or parents, and all alleged parents and any deceased parent.
- (3) The marital status of the mother as of the time of birth of the child and during one (1) year prior thereto, and, if the mother has ever been married, the name of her husband or husbands, and her maiden name and how prior marriages were terminated;
- (4) The name, age, date of birth, racial background, sex and religious affiliation of the child; the name of the child

shall include all names by which child has been identified on the birth certificate and any other legal document;

(5) The name and address of the agency having care of the child;

(6) The date when the child was placed with the agency;

(7) When the child is born out of wedlock, whether the mother and father of the child intend to marry;

(8) If the mother of the child was married within one (1) year prior to the birth of the child but identifies the natural father as a person other than her spouse, then the information as to the spouse (legal father) of the mother shall be set forth as required in subparagraph (2);

(9) The date on which the parent has executed a written notice of the present intent to transfer to the agency custody of the child, if said notice was executed;

(10) The reasons for seeking relinquishment.

(11) If Petitioner also seeks to terminate the parental rights of the putative father, then state whether or not the putative father has filed a petition to Voluntarily Relinquish his parental rights pursuant to 23 Pa.C.S.A. Section 2501 and 2503 and whether the putative father has filed an Acknowledgment of Paternity or Claim of Paternity pursuant to 23 Pa.C.S.A. Section 8302 or 8303.

The prayer shall be for permission to relinquish forever all parental rights and duties of the Petitioner with respect to the child and to award to the agency the custody of the child. The prayer may also be for permission to terminate the parental rights of the putative father pursuant to 23 Pa.C.S.A. Section 2503(d).

(b) *Exhibits.*

The petition shall have attached to it the following exhibits:

(1) An original or certified birth certificate or certification of registration of birth of the child;

(2) The written notice executed by the Petitioner to the agency of that parent's present intent to transfer to the agency custody of the child, if applicable;

(3) The joinder of the agency having care of the child and the consent to the agency to accept custody of the child until such time as the child is adopted.

(4) Original or certified copy of any previous divorce decrees relating to the mother and original or certified copy of mother's previous election to resume maiden name, if applicable;

(5) Original or certified copy of documentation from appropriate State Agency certifying Acknowledgement of Paternity or Claim of Paternity indicating that no acknowledgement of paternity or claim of paternity has been filed.

(c) *Preliminary Decree and Hearing.*

Upon presentation of the petition, the Court, by preliminary decree, shall fix a time for hearing which shall be not less than ten days after filing of the petition. Notice shall be given to the Petitioner. Notice of the hearing shall also be given to the other parent including any alleged natural father, to the putative father whose parental rights could be terminated pursuant to 23 Pa.C.S.A. Section 2503(d), and to the legal father (spouse of mother within during one (1) year prior to birth, if he is not identified as the natural father, and to the parents or guardians of a Petitioner who has not reached the age of 18 years. The Petitioner and an authorized representa-

tive of the agency (if agency is involved) shall be examined under oath at the hearing. The hearing shall be in private. The notices shall be in substantially the following forms, and Affidavit/Proof of Service of the required notices of hearing shall be filed with the Court at least five (5) days prior to the scheduled hearing.

(1) *Notice to Petitioner of Hearing on Petition for Voluntary Relinquishment.*

(Caption of Case)

TO: (name of petitioner), MOTHER/FATHER/LEGAL FATHER OF (adoptive's name), BORN ON THE DAY OF, (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS YOU HAVE TO YOUR CHILD, (insert name of child). THE COURT HAS SET A HEARING TO CONSIDER ENDING YOUR RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON AT M. YOUR PRESENCE IS REQUIRED AT THE HEARING. YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
Pittsburgh PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(2) *Notice to the Other Parent and Legal Father.*

(Caption of Case)

TO: (other parent and/or legal father), MOTHER/FATHER/LEGAL FATHER OF (adoptive's name), BORN ON THE DAY OF, (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED BY (petitioner's name) ASKING THE COURT TO PUT AN END TO ALL RIGHTS SHE/HIS HAS TO YOUR CHILD, (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON AT M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

Name of Attorney
Address
Telephone Number

(3) *Notice to Putative Father whose rights may be terminated.*

(Caption of Case)

TO: (name of putative father), FATHER OF (adoptive's name) BORN ON THE DAY OF, (city), (state).

A PETITION HAS BEEN FILED BY (petitioner's name) ASKING THE COURT TO PUT AN END TO ALL RIGHTS SHE HAS TO YOUR CHILD, (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

YOUR RIGHTS TO (adoptivee's name) MAY ALSO BE TERMINATED IF YOU FAIL TO FILE EITHER AN ACKNOWLEDGEMENT OF PATERNITY OR CLAIM OF PATERNITY PURSUANT TO 23 Pa.C.S.A. SECTION 5103 AND YOU FAIL TO EITHER APPEAR AT THIS HEARING FOR THE PURPOSE OF OBJECTING TO THE TERMINATION OF YOUR RIGHTS TO (adoptivee's name) OR YOU FAIL TO FILE A WRITTEN OBJECTION TO THE TERMINATION OF YOUR RIGHTS WITH THE COURT PRIOR TO THIS HEARING.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
Pittsburgh PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(4) *Notice to Parent(s) or Guardian of Petitioner who has not reached the age of 18 years.*

(Caption of Case)

TO: _____, MOTHER/FATHER OF _____,
MINOR NATURAL FATHER/MOTHER OF (adoptivee's name) BORN ON THE _____ DAY OF _____,
_____, AT (hospital), (county), (city),
(state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (name of minor natural parent) HAS TO HIS/HER CHILD, (adoptivee's name). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO HIS/HER CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

Name of Attorney
Address
Telephone Number

(d) *Final Decree.* (1) A decree of termination in substantially the following form shall be submitted to the Court at the hearing:

And now, this _____ day of _____, _____, the foregoing Petition For Voluntary Relinquishment of Parental Rights and duties to an Agency having been heard, upon consideration thereof and of the supporting testimony and it appearing that _____ desires

to relinquish forever all parental rights with respect to _____, the Court finds the averments of facts in said petition are true and that the prayer of the petition should be granted;

Now, therefore it is ordered, adjudged and decreed that all parental rights and duties of _____ with respect to said child are hereby terminated in accordance with The Adoption Act, 23 Pa.C.S.A. Section 2501 and 2503; said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings; and that custody of _____ is hereby awarded to _____.

_____, J

(2) If the rights of the putative father will also be terminated pursuant to 23 Pa.C.S.A. Section 2503(d) then a decree in substantially the following form shall be submitted to the Court at the hearing:

And now, this _____ day of _____, _____, the foregoing Petition For Voluntary Relinquishment of Parental Rights and duties to an Agency having been heard, upon consideration thereof and of the supporting testimony and it appearing that _____ desires to relinquish forever all parental rights with respect to _____, the Court finds the averments of facts in said petition are true and that the prayer of the petition should be granted;

Now, therefore it is ordered, adjudged and decreed that all parental rights and duties of _____ with respect to said child are hereby terminated in accordance with The Adoption Act, 23 Pa.C.S.A. Section 2501 and 2503; said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings;

Furthermore, the Court finds that the putative father, _____ will not file a Petition to voluntarily relinquish his parental rights pursuant to The Adoption Act, 23 Pa.C.S.A. Section 2501 and 2503, he has not filed an Acknowledgement of Paternity or Claim of Paternity pursuant to 23 Pa.C.S.A. Section 5103, he has not appeared to object to the termination of his parental rights to said child, and has not filed a written objection with this Court to the termination of his parental rights to said child;

Now, therefore it is ordered, adjudged and decreed that the parental rights of the putative father _____ with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2503 (d); said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings;

It is further ordered and decreed that custody of _____ is hereby awarded to _____.

_____, J

(e) *Right to file personal information.* At the time the decree of termination is transmitted to the parents whose rights are terminated, the Court shall advise that parent in writing of his or her right to place personal information on file with the Court and with the Department of Health pursuant to 23 Pa.C.S.A. Section 2905 (d) (relating to impounding of proceedings and access to records).

Sec. 4. Relinquishment to Adult Intending to Adopt Child. Petition.

(a) A petition of a parent for permission to relinquish forever all parental rights with respect to a child under the age of eighteen years who has been in the exclusive

care of an adult or adults for minimum period of thirty days, and who have filed a Report of Intention to Adopt as required by the Adoption Act, 23 Pa.C.S.A. Section 2531 shall contain the following information:

(1) The name and address of the Petitioner and identity, i.e., parent;

(2) The name, address, age, racial background, and religious affiliation of the parent or parents; and all alleged parents and any deceased parent;

(3) The marital status of the mother as of the time of the birth of the child and during one (1) year prior thereto, and if the mother has ever been married, the name of her husband or husband's and/or maiden name and how prior marriages were terminated;

(4) The name, age, date of birth, racial background, sex and religious affiliation of child; the name of the child shall include all names by which child has been identified on the birth certificate and any other legal document;

(5) The date when the Report of Intention to Adopt was filed;

(6) The date when the child was placed with the adult or adults intending to adopt;

(7) When the child is born out of wedlock, whether the mother and father of the child intend to marry;

(8) If the child is born out of wedlock and the father has been identified, information as to the father shall be set forth as required in subparagraph (2);

(9) If the mother of the child was married within one (1) year prior to the birth of the child but identified the natural father as a person other than this spouse, then the information as to the spouse (legal father) of the mother shall be set forth as required in subparagraph (2);

(10) If the natural father is unknown, whether there has been any claim of paternity pursuant to 23 Pa.C.S.A. Section 5103.

(11) The reasons for seeking relinquishment.

(12) If Petitioner also seeks to terminate the parental rights of the putative father, then state whether or not the putative father has filed a Petition to Voluntarily Relinquish his parental rights pursuant to 23 Pa.C.S.A. Section 2502 and 2503 and whether the putative father has filed an Acknowledgement of Paternity or Claim of Paternity pursuant to 23 Pa.C.S.A. Section 5103.

The prayer shall be for permission to relinquish forever all parental rights to the child and to award to the adult or adults intending to adopt, custody of the child. The prayer may also be for permission to terminate the parental rights of the putative father of the child pursuant to the 23 Pa.C.S.A. Section 2503 (d).

(b) *Exhibits.* The petition shall have attached to it the following exhibits:

(1) An original or certified birth certificate or certification of registration of birth of the child;

(2) The separate consent of the adult or adults intending to adopt, to accept custody of the child;

(3) Original or certified copy of any previous divorce decrees relating to the mother and original or certified copy of any previous elections to resume maiden name relating to the mother;

(4) Original or certified copy of Acknowledgement of Paternity or Claim of Paternity indicating that no acknowledgement of paternity or claim of paternity has been filed.

(c) *Preliminary Decree and Hearing.* Upon presentation of the petition the Court, by preliminary decree, shall fix a time for hearing which shall be not less than ten (10) days after filing of the petition. Notice of the hearing shall be given to the Petitioner. Notice of the hearing shall also be given to the other parent, to the putative father whose parental rights could be terminated pursuant to 23 Pa.C.S.A. Section 2503 (d), to the legal father (spouse of mother within one year prior to birth), if he is not identified as the natural father, and to the parents or guardians of a Petitioner who has reached the age of 18. The Petitioner and an authorized representative from the agency (if agency is involved), shall be examined under oath at the hearing. The hearing shall be in private. The notices shall be in substantially the following forms and Affidavit/Proof of Service of the required notices of hearing shall be filed with the Court at least five (5) days prior to the scheduled hearing.

(1) *Notice to Petitioner of Hearing on Petition for Voluntary Relinquishment.*

(Caption of Case)

TO: (name of Petitioner), MOTHER/FATHER/
LEGAL FATHER OF (adoptive's name), BORN ON
THE DAY OF , , AT (hos-
pital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS YOU HAVE TO YOUR CHILD, (insert name of child). THE COURT HAS SET A HEARING TO CONSIDER ENDING YOUR RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON , AT M. YOUR PRESENCE IS REQUIRED AT THE HEARING. YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
Pittsburgh PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(2) *Notice to the Other Parent and Legal Father:*

(Caption of Case)

TO: (other parent and legal father), MOTHER/
FATHER/LEGAL FATHER OF (adoptive's name),
BORN ON THE DAY OF , ,
AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED BY (Petitioner's name) ASKING THE COURT TO PUT AN END TO ALL RIGHTS SHE HAS TO YOUR CHILD, (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON , AT M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

Name of Attorney
Address
Telephone Number

(3) *Notice to Putative Father whose rights may be terminated.*

(Caption of Case)

TO: _____ (putative father), FATHER OF
(adoptive's name), BORN ON THE _____ DAY OF
_____, _____, AT (hospital), (city),
(county), (state).

A PETITION HAS BEEN FILED BY (Petitioner's name) ASKING THE COURT TO PUT AN END TO ALL RIGHTS SHE HAS TO YOUR CHILD, (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, at _____ M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

YOUR RIGHTS TO (adoptive's name) MAY ALSO BE TERMINATED IF YOU FAIL TO FILE EITHER AN ACKNOWLEDGEMENT OF PATERNITY OR CLAIM OF PATERNITY PURSUANT TO 23 Pa.C.S.A. SECTION 5103 AND YOU FAIL TO EITHER APPEAR AT THIS HEARING FOR THE PURPOSE OF OBJECTING TO THE TERMINATION OF YOUR RIGHTS TO (adoptive's name) OR YOU FAIL TO FILE A WRITTEN OBJECTION TO THE TERMINATION OF YOUR RIGHTS WITH THE COURT PRIOR TO THIS HEARING.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
Pittsburgh PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(4) *Notice to Parent(s) or Guardian of Petitioner who has not reached the age of 18 years.*

(Caption of Case)

TO: _____, MOTHER/FATHER OF
_____ MINOR NATURAL FATHER/MOTHER
OF (adoptive's name), BORN ON THE _____ DAY OF
_____, _____, AT (hospital), (county),
(city), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (name of minor natural parent) HAS TO HIS/HER CHILD (adoptive's name). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO HIS/HER CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED.

Name of Attorney
Address
Telephone Number

(d) *Final Decree.*

(1) A decree of termination in substantially the following form shall be submitted to the Court at the Hearing:

And now, this _____ day of _____, _____, the foregoing Petition for Voluntary Relinquishment of Parental Rights to an adult(s) intending to Adopt Child having come on to be heard, upon consideration thereof and of the supporting testimony and it appearing that _____, desires to relinquish forever all parental rights with respect to _____, the Court finds the averments of facts in said petition are true and that the prayer of the petition should be granted;

Now, therefore, it is ordered, adjudged and decreed that the parental rights of the _____, _____ with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2502 and 2503; said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings; and that custody of _____ is hereby awarded to _____.

_____, J

(2) If the rights of the putative father will also be terminated pursuant to 23 Pa.C.S.A. Section 2503 (d), then a decree in substantially the following form shall be submitted to the Court at the hearing:

And now, this _____ day of _____, _____, the foregoing Petition for Voluntary Relinquishment of Parental Rights to an Adult(s) intending to Adopt Child having come on to be heard, upon consideration thereof and of the supporting testimony and it appearing that _____, desires to relinquish forever all parental rights with respect to _____, the Court finds the averments of facts in said petition are true and that the prayer of the petition should be granted;

Now, therefore, it is ordered, adjudged and decreed that the parental rights of _____ with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2502 and 2503; said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings;

Furthermore, the Court finds that the putative father _____ will not file a Petition to voluntarily relinquish his parental rights pursuant to 23 Pa.C.S.A. Section 2502 or 2503 of the Adoption Act, he has not filed an Acknowledgement of Paternity or Claim of Paternity pursuant to 23 Pa.C.S.A. Section 5103, he has not appeared to object to the termination of his parental right to said child, and has not filed a written objection with this Court to the termination of his parental rights to said child;

Now, therefore, it is ordered, adjudged and decreed that the parental rights of the putative father _____ with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2503 (d); said termination to extinguish the power or right of said _____ to object to or receive notice of adoption proceedings;

It is further ordered and decreed that custody of _____ is awarded to _____.

_____, J

Sec. 5. Alternative Procedure for Relinquishment. Petition to Confirm Consent to Adoption.

(a) A petition of an intermediary (or adoptive parents where there is no intermediary) to confirm the consents to an adoption where the parent has executed a consent to adoption as required by 23 Pa.C.S.A. Section 2711 and has failed for period of forty (40) days after executing the consent to file or proceed with a petition for voluntary relinquishment of parental rights, shall contain the following information:

(1) The name and address of the Petitioner and identity, i.e., parent, agency, intermediary;

(2) The name, address, age, racial background and religious affiliation of the parents, including the mother and father and all alleged parents and deceased parent;

(3) The marital status of the mother as of the time of birth of the child and during one (1) year prior thereto, and, if the mother has ever been married, the name of her husband or husbands, and her maiden name and how prior marriages were terminated;

(4) The name, age, date of birth, racial background, sex and religious affiliation of the child; the names of the child shall include all names by which the child has been identified on the birth certificate and any other legal document;

(5) The name and address of the agency, or the adopting parent(s) if non-agency adoption, having care of the child;

(6) The date when the child was placed with agency, or adopting parents if non-agency adoption;

(7) When the child is born out of wedlock, whether the mother and father of the child intend to marry;

(8) If the mother of the child was married during one (1) year prior to the birth of the child but has identified the father as a person other than her spouse, then the information as to the spouse (legal father) of the mother shall be set forth as required in subparagraph (2);

(9) If the father is unknown, whether there have been any claims of paternity or acknowledgment of paternity filed pursuant to 23 Pa.C.S.A. Section 5103;

(10) That the parent has executed a Consent to Adoption pursuant to 23 Pa.C.S.A. Section 2711 and has failed for a period forty (40) days after executing said consent to file or proceed with a petition for voluntary relinquishment of parental rights.

(11) If a putative father's rights are being terminated, pursuant to 23 Pa.C.S.A. 2504(c), that said putative father will not execute a consent to adoption as required by Section 2711 and has not filed an acknowledgement of paternity or claim of paternity pursuant to 23 Pa.C.S.A. Section 5103;

(12) That the agency, or the adopting parent(s) if a non-agency adoption, agree to accept custody of the child until such time as the child may be adopted;

(13) The reasons for seeking relinquishment.

The prayer shall request the Court to Confirm the consent to adoption and to terminate the parental rights of that parent to the child and to award custody to either the agency or, in the case of a non-agency adoption, to the adults intending to adopt. If the rights of the putative father are not to be terminated pursuant to 23 Pa.C.S.A. Section 2504(c), the prayer shall also request same.

(b) *Exhibits.* The petition shall have attached to it the following exhibits:

(1) The joinder, if obtainable, of a parent who is not a petitioner;

(2) An original or certified copy of the birth certificate or certification of registration of birth of the child;

(3) The separate consent of the agency, or of the adult or adults intending to adopt, to accept custody of the child until such time as the child may be adopted;

(4) Original or certified copy of any previous divorce decrees relating to the mother and original or certified copy of any previous elections to resume maiden name relating to the mother;

(5) If the natural father is unknown or if the rights of the putative father are to be terminated pursuant to 23 Pa.C.S.A. Section 2504(c), the original or certified copy of documentation from the appropriate state agency certifying that no Acknowledgment of Paternity or Claim of Paternity has been filed.

(6) The original Consent signed by the parent pursuant to 23 Pa.C.S.A. Section 2711.

(c) *Preliminary Decree and Hearing.* Upon presentation of the petition the Court, by preliminary decree, shall fix a time for hearing which shall be not less than ten (10) days after filing of the petition. Notice shall be given to the parent(s) whose rights are to be terminated, the other parent (including any alleged father), the putative father whose rights could be terminated pursuant to 23 Pa.C.S.A. Section 2504(c), to the legal father if he has not been identified as the father, and to the parent(s) or guardian(s) of a natural parent who has not reached the age of 18 years. Affidavit/Proof of the required notice of hearing on termination of parental rights shall be filed with Court at least five (5) days prior to the scheduled hearing.

The Petitioner unless otherwise permitted by the Court, and the witnesses to the Consent executed pursuant to Section 2711 of the Adoption Act, shall also appear unless:

(1) The signatures of the parent and witnesses are notarized; or

(2) One of the witnesses to the Consent is an attorney; or

(3) One of the witnesses to the Consent is a representative of a licensed adoption agency or child welfare agency representative.

(4) *Notice to the Parent whose rights are being terminated.*

(Caption of Case)

TO: (name of parent), MOTHER/FATHER/LEGAL FATHER OF (adoptive's name), BORN ON THE DAY OF, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS YOU HAVE TO YOUR CHILD, (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING YOUR RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON , AT .M. A COPY OF THE NOTICE TO PETITIONER IS ATTACHED. YOU ARE WARNED THAT EVEN IF YOU FAIL TO APPEAR AT THE SCHEDULED HEARING, THE HEARING WILL GO ON WITHOUT YOU AND YOUR RIGHTS TO YOUR

CHILD MAY BE ENDED BY THE COURT WITHOUT YOUR BEING PRESENT. YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
Pittsburgh, PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(2) *Notice to the Other Parent of Hearing on Petition to Confirm consent and Terminate Parental Rights.*

(Caption of Case)

TO: (name of other parent), MOTHER/FATHER/LEGAL FATHER OF (adoptive's name), BORN ON THE ____ DAY OF _____, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (parent's name) HAS TO YOUR CHILD, (name of Adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

Name of Attorney
Address
Telephone Number

(3) *Notice to Putative Father whose rights may be terminated pursuant to 23 Pa.C.S.A. Section 2504(c).*

TO: (name of putative father), FATHER OF (adoptive's name), BORN ON THE ____ DAY OF _____, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (parent's name) HAS TO YOUR CHILD, (name of Adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

THIS PETITION ALSO ASKS THE COURT TO PUT AN END TO ALL RIGHTS YOU HAVE TO YOUR CHILD (adoptive's name). YOU ARE WARNED THAT IF YOU FAIL TO FILE EITHER AN ACKNOWLEDGEMENT OF PATERNITY OR CLAIM OF PATERNITY PURSUANT TO 23 Pa.C.S.A. SECTION 5103 AND YOU FAIL TO APPEAR AT THIS HEARING FOR THE PURPOSE OF OBJECTING TO THE TERMINATION OF YOUR RIGHTS OR YOU FAIL TO FILE A WRITTEN OBJECTION TO THE TERMINATION OF YOUR RIGHTS WITH THE COURT PRIOR TO THIS HEARING, THE

HEARING WILL GO ON WITHOUT YOU BEING PRESENT. YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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Pittsburgh, Pennsylvania 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(4) *Notice to Parent(s) or Guardian(s) of Parent who has not reached the age of 18 years.*

(Caption of Case)

TO: (name), MOTHER/FATHER OF (name of parent), MINOR FATHER/MOTHER OF (adoptive's name), BORN ON THE ____ DAY OF _____, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (name of minor natural parent) HAS TO (HIS/HER) CHILD (adoptive's name). THE COURT HAS SET A HEARING TO CONSIDER ENDING (HIS/HER) RIGHTS TO (HIS/HER) CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

Name of Attorney
Address
Telephone Number

(d) *Final Decree.* A decree of termination in substantially the following form shall be submitted to the Court at the Hearing:

(1) DECREE

AND NOW, this ____ day of _____, the foregoing Petition to Confirm Consent to Adoption having come on to be heard, upon consideration thereof and the consent attached thereto executed by (name of parent), (mother/father) of (adoptive's name), and it appearing that (name of parent) has failed for a period in excess of forty (40) days after executing the aforesaid consent to file or proceed with a Petition for Voluntary Relinquishment of Parental Rights, the Court finds that the facts averred in said petition are true and that the prayer of the petition should be granted;

NOW, THEREFORE IT IS ORDERED AND DECREED that the Consent to Adoption of (adoptive's name) executed by (parent's name) be and is hereby confirmed in accordance with the Adoption Act, 23 Pa.C.S.A. Section 2504 and the parental rights of (parent's name) to (adoptive's name) be and are hereby terminated; said termination to extinguish the power or the right of said natural parent to object to or receive notice of adoption proceedings;

AND IT IS FURTHER ORDERED AND DECREED that custody of (adoptive's name) be and is hereby

awarded to (agency name, or adopting parent(s) name(s) if non-agency adoption).

BY THE COURT:

_____, J

(2) If the rights of the putative father will also be terminated pursuant to 23 Pa.C.S.A. Section 2504(c), then a decree in substantially the following form shall be submitted to the Court at the hearing:

AND NOW, this ____ day of _____, _____, the foregoing Petition to Confirm Consent to Adoption having come on to be heard, upon consideration thereof and the consent attached thereto executed by (parent's name), (mother/father) of (adoptive's name), and it appearing that (parent's name) has failed for a period in excess of forty (40) days after executing the aforesaid consent to file or proceed with a Petition for Voluntary Relinquishment of Parental Rights, the Court finds that the facts averred in said petition are true and that the prayer of the petition should be granted:

NOW, THEREFORE IT IS ORDERED AND DECREED that the Consent to Adoption of (adoptive's name) executed by (parent's name) be and is hereby confirmed in accordance with the Adoption Act, 23 Pa.C.S.A. Section 2504 and the parental rights of (parent's name) to (adoptive's name) be and are hereby terminated; said termination to extinguish the power or the right of said natural parent to object to or receive notice of adoption proceedings;

Furthermore, the Court finds that the putative father, (putative father's name), will not execute a consent to an adoption as required by 23 Pa.C.S.A. Section 2711, has not filed an Acknowledgment of Paternity or Claim of Paternity pursuant to 23 Pa.C.S.A. Section 5103, has not appeared to object to the termination of his parental rights to said child, and has not filed a written objection with this Court to the termination of his parental rights to said child;

NOW, THEREFORE, it is ORDERED AND DECREED that the parental rights of the putative father, (putative father's name), with respect to said child are hereby terminated in accordance with 23 Pa.C.S.A. Section 2504(c); said termination to extinguish the power or right of said (putative father's name) to object to or receive notice of Adoption proceedings;

IT IS FURTHER ORDERED AND DECREED that custody of (adoptive's name) is hereby awarded to (agency, or adopting parent's name(s) if non-agency adoption).

BY THE COURT:

_____, J

Sec. 6. Involuntary Termination of Parental Rights Petition.

(a) A petition for involuntary termination of parental rights with respect to a child under the age of 18 years may be filed by any of the following:

- (1) Any parent when termination is sought with respect to another parent;
- (2) An agency; or
- (3) The individual having custody of or standing in loco parentis to the child and who has filed a Report of Intention to Adopt.

(b) The petition shall contain the following information:

(1) The name and address of the petitioner and identity, i.e., parent, agency or other as permitted by the statute;

(2) The name, address, age, racial background and religious affiliation of the parent or parents and all alleged parents or person and any deceased parent;

(3) The marital status of the mother as of the time of the birth of the child and during one (1) year prior thereto, and if the mother has ever been married, the name of her husband or husbands and/or maiden name and how prior marriages were terminated;

(4) The name, age, date of birth, racial background, sex and religious affiliation of child; the name of the child shall include all names by which child has been identified on the birth certificate and any other legal document;

(5) The date when the Intention to Adopt was filed;

(6) The date when the child was placed with the adult or adults intending to adopt;

(7) When the child is born out of wedlock, whether the mother and father of the child intend to marry;

(8) If the child is born out of wedlock and the father has been identified, information as to the father shall be set forth as required in subparagraph (1);

(9) If the mother of the child was married within one (1) year prior to the birth of the child but identified the natural father as the person other than her spouse, then the information as to the spouse (legal father) of the mother shall be set forth as required in subparagraph (1);

(10) If the natural father is unknown, whether there has been any acknowledgement of paternity pursuant to 23 Pa.C.S.A. Section 5103;

(11) The grounds for involuntary termination;

(c) The prayer shall be for a decree terminating forever all parental rights with respect to the child and awarding custody of the child to the petitioning agency or individual.

(d) *Exhibits.* The petition shall have attached to it the following exhibits:

(1) An original or certified birth certificate or certification of registration of birth of the child;

(2) The separate consent of the adult or adults intending to adopt, to accept custody of the child, or agency intending to accept custody;

(3) The original or certified copy of any previous divorce decrees relating to the mother and original or certified copy of any elections to resume maiden name relating to the mother;

(4) The original or certified copy of Acknowledgement of Paternity or Claim of Paternity indicating that no acknowledgement of paternity or claim of paternity has been filed;

(5) A copy of the Court Order which adjudicated the child dependent, if child is currently under legal custody of Children and Youth Services or other child welfare services;

(6) If child was previously adopted, attach a certified copy of adoption decree.

(e) *Preliminary Decree and Hearing.*

Upon presentation of the petition the Court shall direct that it be filed and shall fix a date for hearing thereon not less than ten (10) days after the date of filing the petition. At least ten (10) days' notice of the hearing on the petition shall be given to the parent or parents, putative father, or parent of a minor parent whose rights are to be terminated and to the natural or appointed guardian of any parent or parents who is or are under the age of eighteen (18) years, by personal service or by registered mail to his or their last known address. Where personal service is not obtainable and the return receipt of the registered or certified mail does not bear the signature of the person to be notified, notice shall be given under appropriate Order of Court in accordance with Section 1(c) and (d) of Rule 12 of the Court, the last published notice to be at least ten (10) days prior to the date of hearing, the Court shall make a finding relative to the pertinent provisions of 23 Pa.C.S. Section 2531 of the Adoption Act, which finding shall be incorporated in a decree of termination of parental rights. The hearing may be private. Affidavit/Proof of Service of the required notices of hearing on termination of parental rights shall be filed with the Court at least five (5) days prior to the scheduled hearing.

(f) *Notices.*

(1) Notice to parent whose rights are being terminated of hearing on petition for involuntary termination of parental rights.

IN RE: ADOPTION OF _____, a minor.

No. _____ of _____ in the ORPHANS' COURT DIVISION OF THE ORPHANS' COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TO: (parent's name), MOTHER/FATHER OF (minor's name), A MINOR, BORN _____, IN (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS YOU HAVE TO YOUR CHILD (insert name of child). THE COURT HAS SET A HEARING TO CONSIDER ENDING YOUR RIGHTS TO YOUR CHILD. A HEARING WILL BE HELD IN THE ORPHANS' COURT DIVISION, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH, PENNSYLVANIA ON _____, AT _____, ____ M. YOU ARE WARNED THAT EVEN IF YOU FAIL TO APPEAR AT THE SCHEDULED HEARING, THE HEARING WILL GO ON WITHOUT YOU AND YOUR RIGHTS TO YOUR CHILD MAY BE ENDED BY THE COURT WITHOUT YOUR BEING PRESENT. YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
Pittsburgh, PA 15219
(412) 261-2088

Name of Attorney
Address
Telephone Number

(2) *Notice to the other parent of hearing on petition to terminate parental rights.*

(Caption of Case)

TO: (name of other parent), MOTHER/FATHER/LEGAL FATHER OF (adoptive's name), BORN ON THE _____ DAY OF _____, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (parent's name), HAS TO YOUR CHILD (name of adoptee). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHTS TO YOUR CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH PENNSYLVANIA ON _____, ____ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

Name of Attorney
Address
Telephone Number

(3) *Notice to parent(s) or guardian(s) of parent who has not reached the age of 18 years.*

(Caption of Case)

TO: (name), MOTHER/FATHER OF (name of parent), MINOR FATHER/MOTHER OF (adoptive's name), BORN ON THE _____ DAY OF _____, AT (hospital), (city), (county), (state).

A PETITION HAS BEEN FILED ASKING THE COURT TO PUT AN END TO ALL RIGHTS (name of minor natural parent), HAS TO (HIS/HER) CHILD (adoptive's name). THE COURT HAS SET A HEARING TO CONSIDER ENDING HIS/HER RIGHT TO HIS/HER CHILD. THAT HEARING WILL BE HELD IN ORPHANS' COURT, 1700 FRICK BUILDING, 437 GRANT STREET, PITTSBURGH PENNSYLVANIA ON _____, ____ M. A COPY OF THE NOTICE TO (parent's name) IS ATTACHED HERETO.

Name of Attorney
Address
Telephone Number

(g) *Final Decree.* A decree of termination in substantially the following form shall be submitted to the Court at the hearing:

DECREE

AND NOW, this _____ day of _____, _____, the foregoing Petition for involuntary Termination of Parental Rights having come on to be heard, upon consideration thereof and of the supporting testimony and of the record, the Court finds that the facts averred in said Petition are true and the (name of parent) (mother/father) (state grounds for termination with reference to minor) _____

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that all parental rights of (parent's name), to the minor (minor's name), are hereby terminated, said termination to extinguish the power or the right of (parent's name), to object to or receive notice of adoption proceedings, and that the custody of

the minor, (minor's name), is hereby awarded to the (agency, intermediary; or adoptive parent(s)).

BY THE COURT:

Sec. 7. Report of Intention to Adopt. Investigation.

(a) Every person now having or hereafter receiving or retaining custody or physical care of any child under the age of eighteen (18) years, other than that person's own child, grandchild, stepchild, brother or sister of the whole or half blood, or niece or nephew by blood, or adoption, for the purpose or with the intention of adopting the child, shall file a Report relating thereto in the office of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Allegheny County and shall contain the information required by Sec. 2531 of the Adoption Act. The Report shall be verified by affidavit and be filed within thirty (30) days of the date when the child came into the custody or physical care of the person filing the Report.

Attach copy of preplacement report or homestudy (§ 2530-2531 (7)). State whether birth mother has received counseling and where (§ 2505-2531 (5)).

(b) When a Report of Intention to Adopt has been filed, the case will be referred to the Adoption Department for investigation, which shall report on matters alleged in the Report and any other matters that may affect the welfare of the child, including the matters set forth in Sec. 2535 of the Adoption Act.

(c) The Report of Intent to Adopt shall substantially conform with Form A set forth in the Appendix.

Sec. 8. Report of Intermediary.

(a) *Intermediary*—an intermediary is defined as any person or persons or agency acting between the parent or parents and the proposed adoptive parent or parents in arranging an adoption placement. If more than one person or agency acts in this capacity, they shall be identified as co-intermediaries.

(b) Each intermediary who or which has arranged the adoption placement of any child under the age of 18 years shall within six (6) months after filing the Report of Intention to Adopt, make and file with the Clerk of the Orphans' Court a written report under oath, and shall thereupon forthwith notify in writing the adopting parent or parents of the fact that the report has been filed and the date thereof.

(c) Contents of Report. The Report of Intermediary shall set forth the following information as required by 23 Pa.C.S.A. § 2533:

- (1) The name and address of the intermediary.
- (2) The name, sex, racial background, age, date and place of birth and religious affiliation of the child.
- (3) The date of the placement of the child with the adopting parent or parents.
- (4) The name, racial background, age, marital status as of the time of birth of the child and during one (1) year prior thereto, and religious affiliation of the parents of the child and the husband of the natural mother if he was her husband within one (1) year of the birth of the child.
- (5) Identification of proceedings in which any decree of termination of parental rights, or parental rights and duties, with respect to the child was entered.

(6) The residence of the parents or parent of the child, if there has been no such decree of termination.

(7) A statement that all consents required by Section 2711 of the Adoption Act (relating to consents necessary to adoption) are attached as exhibits on the basis upon which the consents are not required.

(8) An itemized accounting of moneys and consideration paid or to be paid to or received by the intermediary or to or by any other person or persons to the knowledge of the intermediary by reason of the adoption placement.

(9) A full description and statement of the value of all property owned or possessed by the child.

(10) A statement that no provision of any statute regulating the interstate placement of children has been violated with respect to the placement of the child.

(11) If no birth certificate or certification of registration of birth can be obtained, a statement of the reason therefor.

(12) A statement that medical history information was obtained and if not obtained, a statement of the reason therefor.

(13) The report of the intermediary shall have attached to it the following exhibits:

1. An original or certified copy of the birth certificate or certification of registration of birth of the child if it can be obtained.

2. A certified copy of any decree of termination of parental rights or parental rights and duties made by a court order other than the court in which the petition for adoption will be filed.

3. A certified copy of the acknowledgement of paternity filed from the appropriate state agency that no claim or acknowledgement of paternity has been filed by the putative father, or a statement that the same has been previously filed with the Court.

4. Where applicable, a copy of the approved Interstate Compact Placement Request (ICPC-100-A).

(d) No intermediary shall place a child in the physical care or custody of a prospective adoptive parent or parents unless a home study containing a favorable recommendation for placement of a child with the prospective parent or parents has been completed within three (3) years prior thereto and which has been supplemented within one (1) year prior thereto. A home study shall be conducted by local public child care agency, an adoption agency or a licensed social worker designated by the Court to perform such study. See 23 Pa.C.S.A. § 2530.

(e) Where a home study required under 23 Pa.C.S.A. is in process but not yet completed, an intermediary may make an interim placement provided the requirements of 23 Pa.C.S.A. 2530(c) are met.

(f) The intermediary in making a placement may honor the preference of the natural parents as to the religious faith in which the adoptive parents intend to rear the adoptive child. However, no person shall be denied the benefits of a placement because of a religious belief in the use of spiritual means or prayer for healing, 23 Pa.C.S.A. § 2725.

(g) Report of the intermediary shall substantially conform with the form set forth in Form B in the Appendix to this Rule.

Sec. 9. Petition for Adoption.

(a) The petition for adoption shall contain the following information:

(1) The full name, residence, marital status, age, occupation, religious affiliation and racial background of the adopting parent or parents and their relationship, if any, to the adoptee.

(2) A statement that a report of intention to adopt under 23 Pa.C.S.A. § 2531, a report of intermediary under 23 Pa.C.S.A. § 2530 and a homestudy and preplacement report under 23 Pa.C.S.A. § 2530 have been filed, if required.

(3) The name and address of the intermediary, if any.

(4) The full name of the adoptee and the fact and length of time of the residence of the adoptee with the adopting parent or parents.

(5) If there is no intermediary or if no report of the intermediary has been filed or if the adoptee is over the age of 18 years, all vital statistics and other information enumerated and required to be stated of record by 23 Pa.C.S.A. § 2533, so far as applicable.

(6) If a change in name of the adoptee is desired, the new name. When the person to be adopted has attained age eighteen (18) and a change of name is desired, Petitioner must submit evidence showing compliance with the law relating to change of name before a decree will be made.

(7) That all consents required by 23 Pa.C.S.A. § 2711 (relating to consents necessary to adoption) are attached as exhibits or the basis upon which such consents are not required, or a statement that same have been previously filed with the Court.

(8) That it is the desire of the petitioner or the petitioners that the relationship of parent and child be established between the petitioner or petitioners and the adoptee.

(9) If no birth certificate or certification of registration of birth can be obtained, a statement of the reason therefor and an allegation of the efforts made to obtain the certificate with a request that the Court establish a date and place of birth at the adoption hearing on the basis of the evidence presented.

(b) The petition for adoption shall contain the following exhibits:

(1) The consent or consents required and executed in accordance by Pa.C.S.A. § 2711 (relating to consents necessary to adoption). If the consents are executed before a notary public then one (1) witness to the consent shall be required to appear at the hearing; otherwise at least one (1) of the witnesses to said consent shall appear at the hearing. The consents need not be attached if they were previously filed with the Court, in which case, the Petition shall so state.

(2) Original or certified copy of birth certificate or certification of registration of birth of the child, unless previously filed with the record.

(3) Original or certified copy of marriage certificate of adoptors.

(4) Divorce decree of both of adopters, and election to resume maiden name, if applicable.

(5) Death certificate of former spouse of both adopters, if applicable.

(6) Death certificate of natural parents, if applicable.

(7) Original or certified copy of divorce decree, if any, of natural parents when petitioner is a step-parent.

(c) The petition shall substantially conform with Form C set forth in the appendix.

(d) A completed Certificate of Adoption Form H 105.091 shall be filed with the Court by Petitioners at the time the Petition for Adoption is filed.

(e) Hearing on Petition for Adoption—Disclosure of Fees and Costs.

The Court shall fix a time and a place for hearing. The hearing shall be private or in open Court as the Court deems appropriate.

At the hearing there shall be offered in evidence a report by petitioner, certified by counsel for the petitioner, setting forth the amount of fees and expenses paid or to be paid to counsel and any other fee, costs and expenses paid or to be paid to an intermediary or any other person or institution, in connection with the adoption.

(f) Requirements and Form of Decree

If satisfied that the statements made in the Petition for Adoption are true, that the welfare of the person proposed to be adopted will be promoted by the requested adoption, and that all requirements of the Adoption Act have been met, the Court shall enter a decree so finding and directing that the person proposed to adopted shall have all the rights of a child and heir of the adopting parent or parents, and shall be subject to the duties of a child to him, or them. In any case in which the petition is withdrawn or dismissed, the Court shall enter an appropriate order in regard to the custody of the child.

Sec. 10. Name of Adoptee.

If requested by the petitioner, the decree may provide that the adoptee shall assume the surname of the adopting parent or parents and any given first and middle names that may be chosen. If the adoptee is over age 18 and desires a change in name evidence must be submitted showing compliance with the law relating to change of name before a decree will be made.

Sec. 11. Impounding of Proceedings.

All petitions, exhibits, reports, notes of testimony, decrees, and other papers pertaining to any proceeding under the Act shall be kept in the files of the Court as a permanent record thereof and withheld from inspection. Information in those records may only be made available under certain circumstances set forth in 23 Pa.C.S.A. Section 2905. Requests for information shall be by petition or letter to the Administrative Judge of the Orphans' Court Division.

Sec. 12. Docket Entries.

Upon the filing of any decree under the Adoption Act, the Clerk shall enter on the docket an entry showing the date of the decree, the name of the adopting parent or parents and the post-adoption name of the adoptee. Information identifying the natural parents shall not be entered on the docket.

Sec. 13. Certificate of Adoption.

After the decree is entered the Clerk shall issue to the adopting parent or parents a certificate reciting that the Court has granted the adoption. The certificate shall not disclose the name of any natural parent or the original name of the person adopted. The certificate shall be accepted in any legal proceedings in the Commonwealth, as evidence of the fact that the adoption has been decreed.

It shall be the responsibility of counsel for the adopting parent to inform other Divisions of this Court of the entry of an adoption decree if this information is relevant to proceedings in other Divisions. It shall be the responsibility of counsel for the adopting parent to also complete and file the Division of Vital Records forms necessary to amend the adoptee's birth certificate.

Sec. 14. Other Requirements.

Medical history information shall be as set forth in Sec. 2902 of the Adoption Act, counseling shall be as set forth in Sec. 2505, and representation for child and parent shall be as set forth in Sec. 2313.

Sec. 15. Definitions.

1. *Putative Father*—The alleged or reputed father that is not the legal father of a child born out of lawful wedlock. A putative father shall include one who has filed a claim of paternity as provided in 23 Pa.C.S.A. § 5103 prior to the institution of proceedings.

2. *Legal Father*—The spouse of the mother during the one (1) year immediately preceding the birth of the proposed adoptee.

Note: The forms have not been reproduced in this publication.

ORPHANS' COURT DIVISION RULE 17**Rule 17. Form for Filing and Indexing of Notice of Claim Against Real Property.***Sec. 1. Filing Notice. Form and Content.*

Any person having a claim against the estate of a decedent and wishing to protect the claim against risk distribution of real property by the personal representative shall file, within one year after the decedent's death, a written notice of claim with the Clerk which may be in the following form:

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA ORPHANS'
COURT DIVISION**

In re Estate of _____, Deceased No. _____ of 20____

NOTICE OF CLAIM

To the Clerk of the Orphans' Court Division:

Index and make proper entry in your official records of the claim of _____ in the amount of \$ _____ (Claimant) against the estate of the above-named decedent. This claim is filed under Sec. 3532(b)(2), PEF Code, 20 Pa.C.S. Sec. 3532(b)(2).

The decedent, whose residence last known to the undersigned was at _____ died on _____, _____ (Address)

(Claimant)

(Claimant's Address)

[Pa.B. Doc. No. 00-2210. Filed for public inspection December 22, 2000, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CARBON COUNTY

Adoption of New Local Rules of Criminal Procedure and Revocation of All Old Local Rules of Criminal Procedure

Administrative Order No. 8-2000

And Now, this 6th day of December, 2000, it is hereby Ordered and Decreed that the following rules for Criminal Procedure in the 56th Judicial District composed of Carbon County be, and the same are, promulgated herewith, to become effective thirty (30) days after publication in the *Pennsylvania Bulletin*; and that the present Carbon County Rules of Criminal Procedure are revoked, effective at the same time.

The Carbon County District Court Administrator is Ordered and Directed to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Criminal Procedural Rules Committee.
4. Forward one (1) copy for publication in the Carbon County Law Journal.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order in the Clerk of Court's Office.

By the Court:

JOHN R. LAVELLE,
President Judge

I. ADMINISTRATION OF CRIMINAL RULES**Rule 102.1. Citing the Criminal Procedural Rules.**

All criminal procedural rules adopted by the Court of Common Pleas of Carbon County under the authority of Pa.R.Crim.1(b) shall be known as the Carbon County Rules of Criminal Procedure and shall be cited as "CARB.C.R.CRIM.P. _____."

Rule 106(B)(1). Continuances in Misdemeanor and Felony Cases.

(A) Continuances shall be submitted to the filing office in writing on the form approved by the Court attached

hereto and made a part hereof and marked "Exhibit I", without the necessity of formal presentation to the Court.

(B) After the continuance is filed and time stamped, it shall be forwarded by the filing office to the Motions and Petitions Coordinator in the Office of Court Administration for Court action and/or scheduling. Following Court action, the Motions and Petitions Coordinator shall return the Application for Continuance to the filing office for filing, docketing, and mailing.

(C) Uncontested continuances will be accepted by mail or electronically provided they are received at least three (3) working days in advance of the scheduled event. If the continuance is filed *less than three (3) working days* before the scheduled event, the attorney will be required to *personally present* it to the Motions and Petitions Coordinator for processing. If the continuance is granted, applying counsel has the duty to timely notify all other counsel or pro se defendants.

(D) Contested continuances must be presented in the Court Administration Office. Notice of presentation of the contested continuance must be given to opposing counsel at least three (3) days prior to presentation. The assigned Judge will conduct a telephone conference, which will be arranged by presenting counsel.

(E) In all cases where the effect of the continuance by the defendant would extend the time of trial beyond the time requirements of Pa.R.Crim.P. No. 1100, the defendant shall appear in Court with Counsel to waive the time requirements under said rule and to agree that his case may be called at a specific time to be fixed by the Court.

Rule 106(B)(2). Reasons for Continuances in Felony and Misdemeanor Cases.

I. No criminal trial shall be continued except for the following reasons:

(A) Prior commitment in the Supreme, Superior, or Commonwealth Court of Pennsylvania or any other appellate court.

(B) Incapacitating illness of defense counsel, Commonwealth Attorney, the defendant or an essential witness for either the prosecution or the Defense.

(C) Death in the immediate family of defense counsel, Commonwealth Attorney, the defendant or an essential witness for either the prosecution or the defense.

(D) Recusal of the Trial Judge.

(E) Defense counsel's prior attachment or is actually engaged in trial in a Court of record.

(F) Counsel unprepared for trial because recently retained, but only at the first listing.

(G) Proceedings are stayed by order of an Appellate Court.

(H) Discovery incomplete or outstanding pretrial motions, provided the application for a continuance on these grounds is made at least two days prior to the date of trial.

(I) Unavailability of defendant's Court-ordered mental health evaluation where insanity or competency to stand trial is in issue.

(J) Unavailability of a ballistics, breathalyzer or drug analysis report prepared by the Police Department, but only at the first listing.

II. Definitions:

(A) Incapacitating illness—A physical or mental impairment so severe that it prevents a person from attending trial.

(B) Essential Witness—One whose testimony at trial is indispensable in determining guilt or innocence.

(C) Engaged in trial in a Court or record that is commenced, but not completed prior to or on the date of the trial for which a continuance is requested.

Rule 120(A)(1). Entry of Appearance and Withdrawal.

(a) After a case has been returned to court, any motion filed by counsel shall be deemed an entry of appearance.

(b) Where counsel has entered an appearance, counsel's representation of the defendant shall be effective until sentencing has been imposed.

Rule 122(D). Compensation Rates for Court-Appointed Conflict Counsel.

I. Non-Homicide Criminal Cases

(1) Counsel, not exceeding one, who has been assigned to represent:

(a) a defendant charged with a non-homicide criminal offense;

(b) an individual in any post-conviction proceedings or,

(c) a juvenile formally charged with delinquency, shall, at the conclusion of the representation, or any segment thereof, be compensated for his/her services in such representation and reimbursed for all reasonable expenses advanced by counsel which were necessarily incurred.

(2) Upon the conclusion of counsel's representation under this Rule, or any segment thereof, the Judge sitting at the trial of the case, if there is a trial, otherwise, the Judge presiding over the disposition of the matter shall, after the filing of the claim and sworn statement, allow such counsel all reasonable personal and incidental expenses, and compensation for services rendered.

(3) Counsel shall be compensated at a rate not exceeding forty dollars (\$40) per hour for time expended in a Court of record and at a rate of thirty dollars (\$30) per hour for time reasonably expended out of Court. For representation of a defendant in a case in which one or more felonies are charged or for proceedings under the Post Conviction Hearing Act, the compensation paid to an attorney shall not exceed fifteen hundred dollars (\$1,500). In a case in which only misdemeanors or juvenile delinquencies are charged, payment shall not exceed seven hundred and fifty dollars (\$750).

(4) Payment in excess of the limits stated herein may only be made, if the Judge to whom the application is made certifies that because of extraordinary circumstances set forth, such additional payments are necessary to provide fair compensation for representation.

(5) (a) Assigned counsel may also make a written request to obtain investigative, expert, or other services necessary to an adequate defense. Upon finding after proper inquiry that such services are necessary, the Court shall authorize counsel to obtain such services on behalf of a defendant. The compensation paid to a person for such services rendered to a defendant shall not exceed five hundred dollars (\$500).

(b) In order to expedite reimbursement to counsel for services rendered by investigators or other experts autho-

rized by the Court, at the conclusion of such expert services rendered on behalf of the defendant, counsel may submit a Petition and Order for reimbursement to counsel of such expert fees. Said Petition and Order shall be submitted to either the Trial Judge, if there is a trial, or to the Judge presiding over the disposition of the matter and may be submitted at any stage of the proceedings. The Petition and Order for reimbursement must contain all information and exhibits relevant to the reimbursement of expenses. Upon submission by counsel of the Petition and Order for reimbursement, the appropriate Judge shall immediately review the Petition and Order for reimbursement, the appropriate Judge shall immediately review the Petition and order payment to counsel of such expert fees as are considered reasonable and necessary.

(6) Counsel so assigned shall not, except with prior approval of the Court, receive or contract to receive directly or indirectly, any compensation for such services or reimbursement for expenses from any source other than herein provided.

(7) Counsel shall be appointed under this Rule only when, because of conflict of interest or other sufficient reason, the individual cannot properly be represented by the Public Defender.

II. Homicide Cases

(1) Counsel appointed shall not exceed one, except that in cases of extreme complexity or where the Trial Judge may, after consultation with, and the consent of the President Judge, appoint co-counsel.

(2) (a) Assigned counsel may also petition the Court to obtain investigative, expert, or other services necessary to an adequate defense. Upon finding, after proper inquiry, that such services are necessary, the court, by written order, shall authorize counsel to obtain such services on behalf of a defendant.

(b) In order to expedite reimbursement to counsel for services rendered by investigators or other experts authorized by the court at the conclusion of such expert services rendered on behalf of the defendant, counsel may submit a Petition and Order for reimbursement to counsel of such expert fees. Said Petition and Order shall be submitted to the Trial Judge, and may be submitted at any stage of the proceedings. The Petition and Order for reimbursement must contain all information and exhibits relevant to the reimbursement of expenses. Upon submission by counsel of the Petition and Order for reimbursement, the appropriate Judge shall immediately review the Petition and authorize payment to counsel of such expert fees as are considered reasonable and necessary. The reviewing Judge will then forward the Petition and Order for reimbursement to the Court Administrator for payment.

(3) Upon the conclusion of counsel's representation under this Rule, or any segment thereof, the Judge sitting at the trial of the case, if there is a trial, otherwise, the Judge presiding over the disposition of the matter, shall, after the filing of the claim and sworn statement, allow such counsel all reasonable personal and incidental expenses, and compensation for services rendered.

(4) Counsel shall be compensated for services rendered at a rate not exceeding fifty dollars (\$50) per hour for time reasonably expended in Court, and forty dollars (\$40) per hour for time reasonable expended out of Court. Such compensation shall not exceed four thousand dollars (\$4,000) where one counsel has been assigned, and shall not exceed a total of six thousand (\$6,000) where two

counsel have been assigned. Payment in excess of the limits stated herein may only be made if the Court, to whom the application is made, finds that because of extraordinary circumstances set forth, such additional payments are necessary to provide fair compensation for representation.

(5) Counsel so assigned must file with the Judge an affidavit that he has not, directly or indirectly, received, nor entered into a contract to receive, any compensation for such services from any source other than herein provided.

III. Appointments

Appointments made pursuant to this rule continue through all stages of the proceedings.

IV. Payment

Such allowance of expenses and compensation under this Rule shall be a charge upon the County of Carbon, to be paid by the County upon Order of the appropriate Judge.

Rule 122(E). Transport Orders.

In any criminal proceeding in which a court appearance by an adult prisoner will be required, the attorney for the prisoner or for the party requesting the presence of the prisoner shall prepare a transport order and obtain the signature of the judge assigned to the case. It shall be the responsibility of the Motions and Petitions Coordinator to deliver necessary copies of the transport order to the Clerk of Courts and to the Sheriff. Absent genuine exigency or most unusual circumstances, a request for transport of prisoner shall be made to the Court not less than twenty-four (24) hours before the scheduled court appearance in cases where the prisoner is in Carbon County Prison and not less than three (3) days before such appearance where the prisoner is incarcerated outside Carbon County.

Rule 122(F). Interpreters.

In all criminal proceedings in Court or before District Justices, where either a defendant or a testifying witness so requests, an official interpreter or an alternate previously approved by the Court, shall be provided by the Court, through the Court Administrator's Office. It shall be the responsibility of counsel representing the defendant, or calling the witness, to notify the Court Administrator's Office, not less than twenty-four (24) hours in advance of the proceeding, when an interpreter will be needed.

Rule 132.1. Continuous Availability and Temporary Assignment of Issuing Authorities.

(A) The continuous availability of an issuing authority in Carbon County shall be arranged by the Court Administrator and all issuing authorities within the County. A rotating schedule of availability shall be maintained wherein each issuing authority will be available for duty on an equal time basis with every other issuing authority. A copy of the schedule of availability shall be provided to all law enforcement agencies with Carbon County, the District Attorney, and the Warden of the Carbon County Correctional Institution.

II. ARD RULES

Rule 311(C). A.R.D. Program.

(a) When scheduling a Preliminary Hearing, the District Justice Office shall forward an application for the ARD program and Prior Criminal Record Statement to the defendant along with the Criminal Complaint, Arrest

Warrant Affidavit, Notice of Hearing, Carbon County Public Defender Guidelines, Summons, Fingerprint Order Card, and for DUI Cases, Explanation of Accelerated Rehabilitation Program for Driving Under the Influence Offenders.

(b) The defendant shall complete and return the application for ARD and Prior Criminal Record Statement on the date of the Preliminary Hearing.

(c) If the District Attorney approves the application for ARD, defendant, defendant's counsel, and the Commonwealth attorney shall execute a Stipulation.

(d) If the defendant is charged with a violation of Section 3731 of the Vehicle Code, defendant, defendant's counsel, and the Commonwealth attorney shall execute an Explanation of Accelerated Rehabilitation Program for Driving Under the Influence Offenders (ARD) and Waiver of Rights Form.

(e) If a DUI/ARD has been negotiated, telephonic arrangements shall be made by the Secretary in the District Justice Office for scheduling of the CRN test, and the defendant shall be provided with a written notice of his CRN schedule date and shall acknowledge that date and time in writing.

(f) The District Justice shall schedule the case according to the annual criminal case scheduling grid.

(g) The Court shall assess the defendant an amount of money payable to the County of Carbon to help defray the costs of the Program. The said amount shall be established by the Court from time to time by Administrative Order.

Rule 320(D). Automated Expungement Under the Accelerated Rehabilitative Disposition Program.

A) Disposition

The following procedure shall expedite the final disposition of cases in the Accelerated Rehabilitative Disposition (ARD) Program:

1) The Adult Probation Office shall maintain an alphabetically sequenced file which lists those persons presently under the Accelerated Rehabilitative Disposition (ARD) Program, or having ever participated in such a program.

2) Each month, the Adult Probation Office will create a list of all probationers whose ARD probation period has terminated the previous month. This list will be distributed to the District Attorney.

3) The District Attorney will be responsible for reviewing the list. If the District Attorney has an objection, he must note that objection within on the list thirty (30) days of creation of the list.

4) If a case is reinstated for cause prior to the completion of the stipulated ARD probation period, the District Attorney must notify the Court Calendar Officer so that the case will then be properly relisted for trial.

B) Expungement

The following procedure shall be effective immediately to automatically expunge the criminal case record for those defendants who have completed the condition(s) of the ARD Program.

1) At the end of each month, the Adult Probation Office will prepare a list of all cases reaching final disposition under the ARD Program during the month. A copy of the list shall be provided to the District Attorney. The

produced list will carry a date on which the cases will be presented to the sentencing judge.

2) The District Attorney will review the listing of potential expungements and present the complete list to the President Judge indicating any cases which he/she feels should not be expunged along with the reason why the expungement should not take place. For proper cause, the case will be deleted from the expungement list by the President Judge.

3) In those cases in which the item is deleted, a letter will be produced and forwarded to the last known address of the defendant and to his attorney-of-record informing each that the case will not be automatically expunged by the Court, but that a petition may be initiated.

The intent of an expungement will be to prevent the inquiry into a person's criminal history of the expunged case by reference to the criminal records of 1) the local police department, 2) the Pennsylvania State Police, 3) the Federal Bureau of Investigation, and 4) the file folders and computer files of the Carbon County Common Pleas Court and District Justice Courts.

4) The procedure to accomplish this will be as follows:

a) The defendant computer record will be removed from the computer file maintained by the Clerk of Courts Office so that reference to an individual's computer criminal history may not be made from either the computer monitors or current criminal information data base.

b) At the same time the Court's computer record is expunged as in 4(a) above, an Order will be automatically produced ordering the local police department to destroy all criminal records, fingerprints, photographs, and photographic plates and to update the criminal extract to totally eliminate reference to the expunged incident.

c) The order in (b) above shall also order the Carbon County Bureau of Collections, the Adult Probation Office, the District Justice Offices, the Pennsylvania State Police and the Federal Bureau of Investigation to destroy all records pertaining to the same arrest.

d) The order in (b) above shall also order the Court Data Processing Director to remove all references pertaining to the same arrest from the computer indices of the Court of Common Pleas of Carbon County and the District Justices of Carbon County.

e) A letter shall be automatically produced by the District Attorney and mailed to the local police department to the last known address of the defendant, informing him or her that the local police department, the Pennsylvania State Police, and the Federal Bureau of Investigation have been ordered to expunge the criminal record for that specific case, that this procedure will be allowed only once in a person's life and that expungement will take place within ninety (90) days of the date of the Expungement Order. A copy of this letter shall also be sent to the defendant's attorney-of-record.

f) A certification, which states that the destruction of records has taken place as ordered, affixed to the Expungement Order shall be signed and returned by the District Justice and local police department to the Clerk of Courts. Said certification shall also be signed by the Court Data Processing Director. The Clerk of Courts shall then insert a copy of the certification with each appropriate case folder. The applicable case folder shall then be placed in a confidential status.

5) A monthly updated confidential list of completed expungements under this procedure shall be maintained by the Court.

III. PROCEDURE FROM ARREST TO FILING INFORMATION

Rule 502(2)(I). Arrest Without Warrant.

Pursuant to the authority set forth in Rule 502 of the Rules of Criminal Procedure, an arresting officer, when the officer deems it appropriate, may promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority, when the following conditions have been met:

1. The most serious offense charged is a misdemeanor of the second degree.
2. The defendant is a resident of the Commonwealth.
3. The defendant poses no threat of immediate physical harm to any other person or to himself or herself.
4. The arresting officer has reasonable grounds to believe that the defendant will appear as required; and
5. The defendant does not demand to be taken before an issuing authority.

Rule 507(B)(1). Approval by the District Attorney of Complaints and Arrest Warrant Affidavits.

The District Attorney of Carbon County having filed a Certification pursuant to Pa.R.Crim.P. 507(a) criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging the following offenses shall not hereafter be accepted by any judicial officer unless the complaint and affidavit have the approval of an attorney for the Commonwealth prior to filing:

- (1) Criminal Homicide 18 Pa.C.S.A. § 2501
 - (2) Murder in any Degree 18 Pa.C.S.A. § 2502
 - (3) Voluntary Manslaughter 18 Pa.C.S.A. § 2503
 - (4) Involuntary Manslaughter 18 Pa.C.S.A. § 2504
 - (5) Rape 18 Pa.C.S.A. § 3121
 - (6) Statutory Sexual Assault 18 Pa.C.S.A. § 3122.1
 - (7) Involuntary Deviate Sexual Intercourse 18 Pa.C.S.A. § 3123
 - (8) Sexual Assault 18 Pa.C.S.A. § 3124.1
 - (9) Aggravated Indecent Assault 18 Pa.C.S.A. § 3125
 - (10) Spousal Sexual Assault 18 Pa.C.S.A. § 3128(a) or (b)
 - (11) Arson 18 Pa.C.S.A. § 3301
 - (12) Robbery 18 Pa.C.S.A. § 3701(a)(1)(i) or (ii) or (iii)
 - (13) Homicide by Vehicle 75 Pa.C.S.A. § 3732
 - (14) Homicide by Vehicle while Driving Under Influence 75 Pa.C.S.A. § 3735
 - (15) Crimes Against Unborn Child in violation of 18 Pa.C.S.A. § 3125;
 - (16) Violation of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-113 (30), (Delivery or Possession with Intent to Deliver a Controlled Substance) shall not hereafter be accepted by any judicial officer, unless the complaints and affidavits have the approval of an attorney for the Commonwealth prior to filing.
- Any criminal complaint filed against a person who is under 18 years of age under circumstances where the law authorizes such person to be charged as if he or she were an adult.

Rule 560(E). Information: Filing, Contents, Function.

(a) (1) Promptly after receipt of transcripts in court cases, the Clerk of Courts shall forward the same to the District Attorney. The District Attorney shall make such investigation deemed appropriate and shall then prepare and file the information against the defendants with the Clerk of Courts. The number of each court case shall run in numerical sequence beginning with one (1) followed by CR and the last two digits of the year of filing, for example 1 CR 99.

IV. BAIL

Rule 524. Valuation of Bail Bonds.

The actual net value of Real Estate securing a bail bond shall be the assessed value of realty deducting therefrom all liens and encumbrances or meet the requirements of Carbon County Rule of Criminal Procedure 528(D)(5).

Rule 528(C). Ten Percent (10%) Cash Bail.

(a) Any defendant who has been properly granted bail may obtain his release from custody as provided herein by (1) depositing with the District Justice or Clerk of Court a sum of money equal to ten percent (10%) of the full amount of bail, but in no event less than fifty dollars (\$50), (2) executing a bond in the form set forth in Pa.R.Crim.P. No. 4014, and (3) processing by the Bail Administrator. A private individual who is not a surety or fidelity company or professional bail bondsman or agent thereof may act as a third-party surety and execute the aforementioned bond on behalf of the defendant. Except as provided in this section, no other individual or business entity may act as a third-party surety.

(c) Upon compliance with all the provisions of this Rule, the defendant shall be released from custody imposed in the criminal charge on which he has made bail.

Rule 528(D)(3). Realty as Bail.

(a) The defendant, or a third party surety as defined in Rule 4007, may post realty as security for bail. In this event, the following must be provided:

1. A written appraisal by a licensed real estate broker in the County in which the property is located.
2. Proof of entry of the bail bond as a lien in favor of the County of Carbon in the Prothonotary's Office of the County in which the property is situated.
3. If the property is mortgaged, a letter from the mortgagee indicating any unpaid balance due.
4. A current lien and judgment search by an attorney or reputable Title Insurance Company.
5. Affidavit of justification of surety as provided in paragraph (d).

(b) Upon review of the above documents, a determination must be made that the actual net value of the property is equal to the amount of the bond. Only after the information requested above is supplied and a determination is made that the actual net value is at least equal to the amount of the bond, will realty be accepted as consideration for bail.

(c) A given piece of realty shall only be used as bail under Rule 309.1 if it has not been posted or is not presently being used for bail for any other charges for defendants unless allowed by Court Order.

(d) If realty is offered as surety, the owner shall present justification for such by filing an affidavit containing the following information for such surety:

1. Owners name, address, age and occupation.
2. A general description of the real estate which is offered as surety.
3. A statement of the manner in which the title is obtained, including the deed or will book reference of the recording of such instrument of title.
4. A statement of all encumbrances, including taxes upon said real estate.
5. A statement of the assessed market and rental takings.
6. A statement of the assessed market and rental value of the real estate.
7. A statement that the real estate is not being contemplated or actually negotiated for in any sale.

Rule 528(D)(3)(a). Justification of Personal Surety.

In justification of bail, personal surety shall be required to give the following information under oath:

- (i) Name, address, age, and occupation;
- (ii) A general description of real estate in Carbon County of which the surety is a freeholder.
- (iii) A statement of the manner in which the surety obtained title, and upon failure to produce the evidence of title, the Deed Book or Will Book reference of the recording of the instrument by which the surety obtained title;
- (iv) A statement of all encumbrances, including taxes, upon said real estate.
- (v) A statement of all other surety undertakings;
- (vi) A statement of the assessed, market, and rental value of the real estate; and
- (vii) A statement that the surety is not contemplating or negotiating the sale of the real estate.

Rule 528(D)(5). Qualification of Surety.

(5) Residents or owners of realty in order to be qualified to act as sureties must own realty within the Commonwealth of Pennsylvania. In all cases of realty owned outside Carbon County, the surety must provide the following:

- (i) Affidavit of Justification of such surety;
- (ii) Written appraisal by a reputable licensed real estate broker in the county in which the property is situate;
- (iii) Proof of entry of the bond in favor of the Commonwealth in the Prothonotary's Office of the county in which the property is situate;
- (iv) Letter from the mortgage company indicating the unpaid balance due on the mortgage covering the said property, if any;
- (v) A lien and judgment search by a reputable title insurance company.

Rule 528(D)(6). Corporate Surety.

Every surety company duly authorized to do business in Pennsylvania may become surety on any bond or obligation required to be filed in this Court; provided that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania,

evidencing such right, shall be on file with the Clerk and that no bond shall be executed by any surety company after May 1 of any year until such a certificate issued after March 31 of the same year shall have been filed with the Clerk, and further provided that, with the exception of bonds filed by insurance companies in motor vehicle misdemeanors, any surety company shall be required to post the sum of twenty-five thousand dollars (\$25,000) as security with the Clerk of Court.

Rule 535(A). Receipt.

At the time of posting of any bail, including percentage bail, but excluding a surety bond, the office at which the bail is posted shall issue to the person posting the bail a receipt itemizing the bail and the fees and costs which will apply in the absence of a violation or forfeiture.

Rule 535(D)(1). Disposition of Bail—Administrative Fee.

The Clerk of Courts shall, upon full and final disposition of a case, retain the sum of seventy-five dollars (\$75.00) as an administrative fee. This sum shall be considered earned at the time the bail undertaking is executed.

Rule 535(D)(2). Disposition of Bail Deposited by Defendant.

If the Court, upon sentence, orders the defendant to pay a fine and costs of prosecution or to make restitution, the Court may order that the amount deposited by the defendant, whether under the percentage cash bail program or otherwise, shall be first applied in the case of percentage bail to the administrative costs of the Clerk of Courts then to any restitution ordered by the Court, then to the fine, if any, and then to other costs ordered by the Court to be paid.

Rule 535(D)(3). Disposition of Bail Deposited by a Third Party.

Where a third party surety has deposited money, under the percentage cash bail program or otherwise, the monies deposited shall be first applied to the administrative costs of the Clerk of Courts. With the voluntary written authorization of the person who deposited the bail, any balance shall then be applied to any restitution ordered by the Court, then to the fine, if any, and then to other costs ordered by the Court to be paid.

Rule 535(D)(4). Authorization to Pay Attorney.

When authorized in writing by the defendant and any third party surety who posted the deposit, whatever balance of such deposit is repayable to the defendant or the third party surety, may be paid to the defendant's attorney of record, upon filing such written authorization with the Clerk of Courts.

Rule 535(E). Removal of Judgment Indexed Against Realty.

The Clerk of Courts shall, within 20 days after the full and final disposition of a case on which realty has been posted as bail, notify the surety to present to the Clerk of Courts for execution by the Clerk of Courts a praecipe to remove the judgment previously entered by the Clerk of Courts.

Rule 535(F). Notice to Person Posting Bail.

Notice of full and final disposition of a case shall be sent by the Clerk of Courts to the person who originally posted money at his address of record. Any money not claimed within one hundred and eighty (180) days from

the time of full and final disposition of the case shall be deemed as fees and shall be forfeited to the use of the County of Carbon.

Rule 529(A). Bail Reduction.

The Bail Administrator shall be given at least twenty-four (24) hours notice of presentation of a petition by defendant to reduce bail in court cases. Defense counsel and the District Attorney shall make an effort to agree on an appropriate amount of bail and any special conditions, the breach of which would result in revocation of bail. If an agreement can not be reached on petition, the Court shall set a time for hearing.

V. PRETRIAL PROCEDURES TO CALL OF LIST

Rule 570(D). Pretrial Conferences.

(a) Pretrial conferences shall be conducted by the District Attorney, defense counsel, or the pro se defendant on all cases which have not resulted in plea agreements at the preliminary hearing level. A criminal case scheduling grid, prepared annually by Court Administration, shall establish the dates for pretrial conferences. All defendants must be present in person or through the video conferencing system except for good cause shown. This will be the last date on which negotiated pleas will be accepted. Pleas entered after this date will be "open" with respect to sentence.

(b) Prior to the Defendant's Pre-trial Conference, the District Attorney shall obtain data of the prior criminal convictions, if any, of the defendant. Within forty-five (45) days of receipt of the report, the District Attorney shall calculate the prior record score for guideline sentencing purposes.

(c) At the Pre-trial Conference, the District Attorney shall make the Sentencing Guideline Report available to defense counsel, and if unrepresented, the defendant.

(d) At the end of the pretrial conference, written stipulations for pleas, trials, or other dispositions shall be filled out and shall be signed by the District Attorney or Assistant District Attorneys, defense counsel, and defendant. The original stipulation shall be filed in the Clerk of Court's office and copies forwarded to the District Attorney's Office, defense counsel and defendant and to the Deputy Court Administrator/Case Manager for scheduling purposes.

(e) Upon failure of defendant to appear at a pretrial conference in accordance with this Rule, defendant's bail shall be forfeited and a bench warrant shall be issued.

Rule 571(C)(3). Arraignment in Non-Capital Cases.

1. Arraignments in non-capital cases shall be conducted in accordance with the annual criminal case scheduling grid established by the Deputy Court Administrator/Case Manager.

2. Every defendant who shall be held for Court by the District Justice at the conclusion of the preliminary hearing or at the time he waives his preliminary hearing shall be furnished with a Notice of Arraignment and Pretrial Conference form and, in appropriate cases, applications for ARD Program by District Justice.

3. The Notice of Arraignment and Pre Trial Conference forms furnished by the District Justice shall advise the defendant when to appear before the District Attorney for the purpose of arraignment and pretrial conference. Defendant shall acknowledge receipt of the notice of arraignment and pretrial conference.

4. When the defendant is held for Court the District Justice shall also transmit to the Clerk of Courts and to the District Attorney a copy of the notice of arraignment and pretrial conference.

5. Every defendant against whom an information has been filed shall be arraigned before the District Attorney or, if the District Attorney deems it necessary, before the Court.

6. All defendants who are unrepresented by counsel must appear personally at arraignment.

7. Defendants who are represented by counsel must also appear personally at arraignment unless:

a. Counsel, on the form provided by the Clerk of Courts, has entered a written appearance, acknowledged receipt of copies of the information and instruction sheet and concurs in his/her client's waiver of formal arraignment; and

b. Defendant has acknowledged receipt of copies of the information and instruction sheet, waived explanation by the District Attorney and formal arraignment and represented that he/she understands:

(i) the nature and seriousness of the charges and possible consequences of conviction;

(ii) rights explained in the sheet of written instructions;

(iii) necessity of filing an omnibus pretrial motion to exercise pretrial rights;

(iv) the requirement of notice to assert such defenses as alibi and insanity or diminished capacity and the consequences of failure to file proper notices; and

(v) the time limits in which defendant may commence discovery and file an omnibus pretrial motion; and

c. Defendant enters a plea of not guilty and requests a Jury trial

8. Defendants and counsel shall be provided copies of the information and instruction sheet used and approved by the Court. This instruction sheet shall be read by the District Attorney or an Assistant District Attorney at the beginning of arraignment. Persons wanting explanation will be permitted to ask questions.

9. Defendant will be individually called before the District Attorney or an Assistant District Attorney at which time the information will be read and the nature of the charges explained. Formal explanation may be waived if:

a. the charges are misdemeanors and no jail sentence is contemplated; or

b. counsel is present and waives a reading.

Rule 573(1). Pre-Trial Discovery and Inspection.

Defense counsel desiring pre-trial discovery and inspection under Pa.R.Crim.P. No. 573 shall make an appointment with the District Attorney's Office for that purpose. At that conference, in addition to discussing discovery sought, the parties shall discuss possible plea negotiations.

Rule 574.1. Motions & Petitions Procedure.

(F) Motions and Petitions shall be submitted to the filing office, without the necessity of presentation to the Court.

(G) The Motion or Petition is filed, time stamped, docketed, and entered in the Court Computer System. It shall then be forwarded by the filing office to the Motions

and Petitions Coordinator in the Office of Court Administration for Court action and/or scheduling. The Motions and Petitions Coordinator shall, after action by the Court, return the Motion or Petition to the filing office for mailing.

(H) All Motions and Petitions subject to this rule shall be accompanied by the following items in the following order:

1. A completed cover sheet in the Form of Exhibit "A";
2. A proposed order (and rule to show cause, if necessary);
3. Stamped, addressed envelopes for each attorney of record and unrepresented party; and
4. Sufficient copies of the Petition or Motion and proposed Order or Rules for each attorney of record and unrepresented party.

(I) All Motions and Petitions shall be in writing, signed by a party or counsel of record and shall contain the caption of the case, the name, address, telephone number and Supreme Court identification of counsel for the moving party and the names and addresses of adverse parties and their attorneys.

Rule 574.2. Pro Se Filings.

(1) All pro se petitions and motions must be filed and docketed in the office of the Clerk of Courts. Petitions and motions sent to any other office shall be returned with a copy of this rule attached thereto.

(2) The Clerk of Courts shall forward a copy of all documents by individuals themselves, to their attorney of record, if any.

(3) All pro se filings must be clocked in by the Clerk of Courts. Filings which are not in compliance with the law or rule of court shall be duly noted and forwarded immediately to the Motions and Petitions Coordinator. The Court Administrator, after consulting with the Court, shall notify the individual of the deficiency in the filing.

(4) Notice to any individual who has filed a deficient pleading shall be as follows:

NOTICE: YOU HAVE FILED A DOCUMENT WITH THE COURT OF COMMON PLEAS WHICH IS NOT IN COMPLIANCE WITH THE LAW OR RULE OF COURT. YOU ARE ADVISED THAT YOUR FAILURE TO COMPLY MAY RESULT IN PREJUDICE TO YOUR RIGHTS OR CLAIM. YOU SHOULD CONSULT A LAWYER IMMEDIATELY. IF YOU CANNOT AFFORD A LAWYER, YOU MAY BE ENTITLED TO BE REPRESENTED FREE OF CHARGE BY THE PUBLIC DEFENDER'S OFFICE. IF YOU BELIEVE YOU QUALIFY, CONTACT THE FOLLOWING OFFICE:

Carbon County Public Defender
Carbon County Courthouse
Jim Thorpe, PA 18229

IF YOU ARE INCARCERATED, YOU MAY OBTAIN AN APPLICATION FOR THE PUBLIC DEFENDER'S OFFICE BY ASKING THE STAFF IN THE JAIL.

IF YOU ARE ALREADY REPRESENTED BY COUNSEL, A COPY OF YOUR FILING HAS BEEN SENT TO THEM BY THE CLERK OF COURTS.

IF YOU ARE NOT REPRESENTED BY COUNSEL AND DESIRE TO REPRESENT YOURSELF OR DO NOT QUALIFY FOR FREE COUNSEL, YOU ARE INSTRUCTED THAT YOU MUST BRING YOUR FILING INTO COMPLIANCE WITH THE LAW OR RULE OF

COURT YOU HAVE VIOLATED, OR YOUR RIGHTS OR CLAIM MAY BE PREJUDICED.

Rule 578(A). Omnibus Pre-Trial Motions.

All Omnibus pre-trial motions shall be presented within thirty (30) days after arraignment date (even though waived) (in accordance with Pa.R.Crim.P. No. 579) to the Court, which shall promptly set the hearing or argument dates.

Rule 578(B). Pre-Trial Pro Se Motions.

Where a defendant is represented by counsel, no pre-trial motions shall be considered by the court unless prepared and presented by that counsel. Any pro se pre-trial motions filed by defendant represented by counsel shall be immediately referred by the court to counsel.

Rule 588. Arguments.

Subject only to such modifications as may be required by the special provision of Pa.R.Crim.P. 720 and Carbon County Criminal Rule 720(E), the practice and procedure with respect to all matters of listing of arguments, form of briefs, filing of briefs, sanctions for failure to time file briefs, and oral arguments shall be governed by Pa.R.Crim.P. 210 and 211.

Rule 590(D). Guilty Plea Colloquy Form.

(a) During the course of counseling a defendant relative to any plea of guilty or nolo contendere in the Court of Common Pleas, counsel shall review with the defendant the Carbon County Guilty Plea Colloquy Form available from the Office of the District Attorney, and shall explain to the defendant the contents of that form. Such forms shall be initialed and signed by the defendant where appropriate and counsel's signature thereon shall constitute a certification by the attorney that he/she has read, discussed and explained the plea form to the defendant, and that to the best of his/her knowledge, information and belief, his client understands what he is doing by entering his plea.

(b) Guilty plea colloquy forms shall be filed in open Court at the time of entry of any plea of guilty or nolo contendere.

(c) For pleas to a summary offense, the plea form need only consist of the disposition page, and need only state the offenses to which the defendant is pleading and the sentence which he is to receive.

Rule 590(E). Call of the List.

VII) The call of the criminal list for a particular criminal trial session of Court shall be held by the Court at 9:30 A.M. on the Thursday morning prior to the first day of the Court's trial session as set forth on the annual Court calendar prepared by the Deputy Court Administrator/Case Manager.

VII) All unrepresented defendants and all attorneys representing defendants must attend the criminal calendar call of the list unless:

- 1) A date certain has been scheduled for the entry of a plea or;
- 2) A motion for a continuance has been previously properly presented and granted; or

3) The Court has excused a defendant and/or counsel based on good cause shown or defense counsel and the District Attorney's office have agreed that the defendant and/or counsel may be excused from the call of the list.

b) Failure to comply with the requirements of this rule may result in the imposition of sanctions of the Court

including the issuance of a bench warrant and revocation of bail bond. Additionally, the District Attorney's office may file a charge of default in required appearance.

c) Counsel shall keep the assigned judge advised of any changes in the status of his case or the availability of the defendant for trial.

VI. TRIAL

Rule 646(C). Admission and Custody of Exhibits.

A) Counsel for the respective parties shall retain possession, and shall be responsible for, the care and custody of all tangible exhibits used at hearings and trials, whether or not they have been presented, marked, identified and used, until such time as they have been formally offered into evidence.

B) From and after an order of admission, or if admission is denied, if the Court should so order, the Court Stenographer shall take possession, and shall be responsible for the care and custody of all such tangible exhibits during the remainder of the hearing or trial, and thereafter, until further order of the Court.

C) At any time after final disposition of the case, including the expiration of any applicable appeal period, the Court Stenographer may, after notice to counsel for all parties, petition the Court for an order authorizing the removal and disposition by destruction, or otherwise, of any tangible exhibit of a size or weight precluding its enclosure in a regular case file.

VII. PRESENTENCE PROCEDURES

Rule 702(C). Presentence Procedures.

(a) Before the sentencing hearing, counsel for defendant, or if unrepresented, the pro se defendant shall obtain from the District Attorney's Office a form entitled "Appellant Rights of Defendant After Sentencing." Counsel shall review with the Defendant said form and shall explain to the Defendant the contents of that form. Such form shall be initialed and signed by the defendant where indicated and counsel's signature thereon shall constitute a certification by counsel that he/she has read, discussed, and explained the form to the defendant, and to the best of his/her knowledge, information, or belief the defendant understands the form. (The form is marked FORM IV and is attached hereto in the ADDENDA to these Rules.)

(b) Prior to imposition of sentence, a completed Guideline Sentencing Form, as required by 204 Pa. Code § 303.1(d), shall be made available to the sentencing judge.

(c) (1) If a pre-sentence investigation report is required by the sentencing Judge, the Guideline Sentencing Form shall be prepared by the report preparer.

(2) If a pre-sentence investigation report is not required, the Guideline Sentencing Form shall be prepared by the District Attorney.

(d) The Guideline Sentencing Form shall be reviewed by counsel for both the Commonwealth and the defendant prior to submission to the sentencing judge.

(e) The Clerk of Courts—Criminal Division shall send a copy of the Guideline Sentencing Form to the Pennsylvania Commission on Sentencing.

Comment: 204 Pa. Code § 303.1(d) provides that a Pennsylvania Commission on Sentencing Guideline Sentencing Form shall be completed at the Court's direction and shall be made a part of the record no later than

twenty days after the date of each sentencing, and a copy shall be forwarded to the Pennsylvania Commission on Sentencing.

As used in Section (c), "imposition of sentence" includes imposition of probation.

VIII. PAROLE AND PROBATION

Rule 708(B)(4). Petition for Parole.

Within thirty (30) days before a defendant becomes eligible for parole (except for DUI cases), the Adult Probation Office shall conduct an investigation to determine whether the defendant should be released at the expiration of his or her minimum sentence. Said investigation shall include whether District Attorney or victim have any opposition, the defendant's course of conduct while incarcerated, whether a suitable residence is available, defendant's potential for obtaining employment, and a payment plan for any outstanding, costs, fines, and restitution. Upon completion of said investigation, the Adult Probation Office shall make a recommendation for approval or denial of parole and transmit said recommendation to the Sentencing Judge. If the Court denies parole, the defendant shall have the right to a hearing upon filing a Petition for Parole.

Rule 708(E). Violation of Probation, Parole, or Ard.

1. When it is alleged that a defendant is in violation of his or her probation/parole, a Gagnon I hearing shall be held before a member of the Adult Probation staff designated for that purpose by the President Judge. This hearing will be held within ten (10) Court business days if the defendant is incarcerated as a result of the violation(s). That designated hearing officer shall be responsible for advising the defendant of all information required at a Gagnon I hearing. Should the hearing officer, at the Gagnon I hearing, find that a prima facie case exists, the following procedure shall be followed.

(a) A Gagnon II hearing, whether it be with regard to a contested violation, alleged violations or merely for the purpose of disposition or for both purposes, shall be scheduled promptly, but no later than 120 days after the officer files a motion with the Court requesting that a Gagnon II hearing be scheduled and advising in that motion as to when the Gagnon I hearing was completed.

(b) That motion shall also indicate whether the allegations are contested or whether the Gagnon II hearing will be for disposition purposes only. The hearing officer shall serve a copy of the motion upon the District Attorney's office. The defendant shall be afforded the right to representation by an attorney of choice, or upon his/her application, the appointment of the Public Defender for the Gagnon II hearing.

(c) Should a determination be made by the hearing officer at the Gagnon I hearing, that the defendant should be returned to continued supervision at liberty, the defendant shall be released from custody, if incarcerated, and continue on probation/parole.

2. When a defendant is alleged to be in violation of ARD, a hearing shall be held before the Court. Defendant shall have the right to waive said hearing by signing the Stipulation to the REVOCATION OF ARD form. (Said form is marked FORM III and attached in the ADDENDA to these rules.)

Rule 708(F). Arrest and Processing of Probation/Parole Violators.

When a duly appointed adult probation officer has conducted an investigation which reveals that a violation

of supervision has been committed by the defendant, the officer shall request a supervisor to issue a "Supervisor's Warrant" for the arrest and detention of the defendant. The defendant shall be arrested upon issuance of the warrant, by any peace officer in the Commonwealth authorized to make arrests, or in the case of a defendant who has absconded the Commonwealth, the warrant shall be submitted to the proper police agency for processing as per normal procedure. Following arrest, the filing officer shall request a Gagnon I hearing before the Court designated hearing officer, which will be held within ten (10) Court business days. The above procedure relating to Rule 1409 shall then be followed.

Should the filing officer determine that a supervisor's warrant is not needed, a Gagnon I hearing will be scheduled as soon as possible following discovery of the violations(s), and the 1409 procedure will continue as stated. Notice of the Gagnon I hearing, in this instance, shall be served upon the defendant by the filing officer and a Gagnon I hearing would then be scheduled at the convenience of the hearing officer.

IX. POST SENTENCE

Rule 720(E). Post-Sentence Motions.

(1) *Service of post-sentence motions*—Post sentence motions shall be filed within 10 days from the date of the sentence with the Clerk of Courts and copies thereof delivered to the trial judge, the court reporter and the district attorney on the same day. Such motions shall include a separate page addressed to the court reporter setting forth specifically those portions of the record which are to be transcribed. Any changes in the request for transcription shall be in writing addressed to the court reporter.

(2) Any request for leave to file additional specific grounds shall be made by a motion and proposed order, and the motion shall contain specific reasons in support thereof. With prior notice to opposing counsel, the motion shall be presented to the trial judge within 10 days after the copy of the record is transmitted to defendant's counsel, if any, and otherwise to the defendant.

(3) *Filing and delivery of transcript*—Transcript of the trial shall be delivered by the court reporter to the Clerk of Courts within 60 days from service upon the court reporter of the request for transcript referred to in Carbon County Rule of Criminal Procedure 750(E)(1) above unless further extended by order of the trial judge upon cause shown. A copy of said transcript shall be delivered forthwith by the court reporter to counsel for

any party ordering a copy or upon an unrepresented party ordering a copy. The court reporter shall execute and file with the Clerk of Courts and the Deputy Court Administrator/Case Manager a certification indicating the date when copies of the record were delivered to each of the above.

(4) *Time for argument*—Within ten (10) days of the filing of a post-sentence motion, the Deputy Court Administrator-Case Manager shall fix a date and time of argument and, if the judge decides briefs are required to dispose of the motion, briefs shall be filed with the Clerk of Courts with copies to the judge and opposing counsel.

(5) *Time for service of briefs*—The defendant shall serve upon the Commonwealth and the Court one copy each of a brief not less than 20 days before the date fixed for argument. The Commonwealth shall serve upon counsel for the defendant, if any, or otherwise on the defendant, and the Court one copy of its brief not less than 3 days before the date fixed for argument.

(6) *Failure to file briefs*—When a case is listed for argument, if the moving party has filed no briefs, the motions or petitions shall be dismissed as of course. If the opposing party has filed no brief, the moving party shall proceed ex parte.

(7) *Extension of briefing deadline*—Any party, for good cause, may apply for an extension of time to file his brief. The application shall identify the moving party, state the reasons for the request of extension, and recite whether the request for extension is opposed or unopposed.

Rule 720(F). Appeals to Supreme, Superior and Commonwealth Court.

In all direct appeals to the Supreme, Superior, and Commonwealth Courts of Pennsylvania from orders or decrees of this Court, appellant's counsel shall, immediately upon taking the appeal, serve upon the judge of this Court from whose order or decree the appeal was taken, a concise statement of the matters complained of and intended to be argued on appeal, so that an appropriate opinion may be prepared.

Immediately upon filing a brief or paper book with any Appellate Court, a copy thereof shall be served upon the judge of this Court from whose order or decree the appeal was taken.

Whenever an appeal is withdrawn by counsel, notice of such fact shall immediately be given to the judge from whose order or decree the appeal was taken.

**CARBON COUNTY COURTS
APPLICATION FOR CONTINUANCE
CIVIL—CRIMINAL
INSTRUCTIONS**

1. Applying counsel shall submit application for continuance to other counsel who will indicate in Sec. III, any opposition, or if none so indicate, and sign.
2. Make copies of form for Filing Office, all counsel, pro se parties, and Court Administration.
3. Application shall first be filed and then submitted to the Court, which will indicate action taken in Sec. V. Copies will be distributed as indicated in (2) above.

- I. Application is hereby made to continue the ☐ trial ☐ hearing ☐ argument ☐ conference ☐ plea
☐ sentencing ☐ arbitration scheduled in the following case:

NO. _____

VS

DATE SCHEDULED _____

NO. OF PREVIOUS

CONTINUANCES _____ by Plaintiff _____ by Defendant

II. The application is made for the following reasons:

- | | | |
|--|---|---|
| <input type="checkbox"/> vacation | <input type="checkbox"/> negotiating settlement | <input type="checkbox"/> record incomplete |
| <input type="checkbox"/> illness of atty. | <input type="checkbox"/> expert unavailable | <input type="checkbox"/> counseling ordered |
| <input type="checkbox"/> illness of party | <input type="checkbox"/> party unavailable | <input type="checkbox"/> other—specify |
| <input type="checkbox"/> late sub of atty. | <input type="checkbox"/> atty. unavailable | <input type="checkbox"/> _____ |
| <input type="checkbox"/> conflict—atty. | | |

Signature of Counsel

Date

Representing

III. Application is (opposed/not opposed) for the following reason:

Signature of Counsel

Date

Representing

IV. (In criminal cases only) Attached hereto and made a part hereof is a duly executed waiver of defendant's right to a speedy trial under Pa.R.Crim.P. No. 1100.

V. Action taken by the Court. AND NOW, _____,

- ☐ Application is denied
- ☐ No further continuances.
- ☐ Application is granted and the case is continued to the date listed below. Counsel are hereby attached for this proceeding on the new date:

Judge

FORM "I"

THE COURTS

**CARBON COURT OF COMMON PLEAS
CRIMINAL DIVISION
MOTION COURT COVER SHEET
NO.**

vs.

FILING OF: Commonwealth ()

Defendant ()

TYPE OF FILING (check one):

- ☐ 1. Application for Continuance
- ☐ 2. Motion for Discovery & Inspection (RCRP 305) (113)
- ☐ 3. Motion to Dismiss (115)
- ☐ 4. Omnibus Pretrial Motion (160)
- ☐ 5. Motion to Suppress (124)
- ☐ 6. Petition for Counsel-Conflict Case (213)
- ☐ 7. Petition to Consolidate (217)
- ☐ 8. Petition to Discharge (RCP 314) (220)
- ☐ 9. Petition for Special Furlough (225)
- ☐ 10. Petition for Parole (228)
- ☐ 11. Petition to Reconsider Sentence (240)
- ☐ 12. Petition to Revoke Parole (243)
- ☐ 13. Petition to Revoke Probation (246)
- ☐ 14. Petition to Reduce Bail (249)
- ☐ 15. Petition for Writ of Habeas Corpus (267)
- ☐ 16. Post Trial Motions (274)
- ☐ 17. Petition for Forfeiture (356)
- ☐ 18. Petition for Destruction (219)
- ☐ 19. Petition for Attorney Fees (227)
- ☐ 20. Other Motion or Petition (specify):
- ☐ 21. Response to:

OTHER ATTORNEY:

Attorney's Name (Typed)

Attorney for:

☐ Commonwealth ☐ Defendant

N.B. The numbers after the Motion or Petition above are docket codes used in the Court Computer System. Please be precise when checking your Motion or Petition. When filing Motion or Petition, provide Clerk with sufficient copies for opposing Counsel and filing Counsel.

THIS FORM IS AVAILABLE IN THE CLERK OF COURTS OFFICE

FORM "II"**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA****CRIMINAL****COMMONWEALTH OF PENNSYLVANIA****vs.****No.****STIPULATION TO THE REVOCATION OF ARD**

I, the Defendant in the above captioned case, hereby acknowledge receipt of a copy of the Petition for Revocation of ARD filed by the Carbon County Office of Adult Probation and Parole alleging that I have violated certain condition(s) of the ARD Program.

I understand that I have the absolute right under Pennsylvania Rule of Criminal Procedure 184 to challenge the allegations contained in the Petition and to have a hearing in front of a Judge to determine whether or not I violated the condition(s) of the ARD Program.

I voluntarily waive my right to challenge the allegations contained in the Petition and to have a hearing in front of a Judge to determine whether or not I violated the condition(s) of the ARD Program and I hereby consent to the Revocation of my placement in the ARD Program without the necessity of a hearing.

I fully understand that, as a result of my consent to the Revocation of my placement in the ARD Program without the necessity of a hearing, my placement in the ARD Program will be automatically revoked and that the charges for which I was placed in the ARD Program will be scheduled for a Pre-Trial Conference before the District Attorney's Office for further disposition.

Date: _____

Defendant

FORM "III"

TO THE DEFENDANT:

PLEASE READ AND THEN REVIEW THE FOLLOWING INFORMATION WITH OUR LAWYER. IT EXPLAINS THE RIGHTS YOU HAVE FOLLOWING SENTENCING. IF YOU DO NOT UNDERSTAND ANYTHING CONTAINED ON THIS DOCUMENT, ASK YOUR LAWYER OR THE SENTENCING JUDGE TO EXPLAIN IT TO YOU. DO NOT SIGN THIS DOCUMENT UNTIL YOU UNDERSTAND IT FULLY.

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA

vs.

NO(s).

DEFENDANT

APPELLATE RIGHTS OF DEFENDANT AFTER SENTENCING

1. After you are sentenced, you have the right to file either a post-sentence motion or an appeal to the Superior Court of Pennsylvania.

2. If you wish to file a post-sentence motion, it must be filed with the Criminal Clerk of Courts of Carbon County no later than 10 days after the imposition of sentence.

3. If you wish to file an appeal, a notice of appeal must be filed with the Criminal Clerk of Courts of Carbon County, within 30 days of imposition of sentence. This is a right of appeal which you may exercise without filing a post-sentence motion. If you file a post-sentence motion, you would also have a right to appeal from an order deciding that motion or denying the motion by operation of law.

4. If you file a post-sentence motion, all requests for relief must be stated with specificity and particularity, and consolidated in the motion, which may include:

(a) a motion challenging the validity of a plea of guilty or nolo contendere, or the denial of a motion to withdraw a plea of guilty or nolo contendere;

(b) a motion of judgment of acquittal;

(c) a motion in arrest of judgement;

(d) a motion for a new trial; and/or

(e) a motion to modify sentence.

5. If you file a post-sentence motion, it and any supplemental motion you may be permitted to file, must be decided by the judge within 120 days of the filing of the original motion. The judge may, at your request, grant one 30 day extension for deciding the motion, if good cause is shown. If the judge fails to decide the motion within the allowed time, the motion will be denied by operation of law, and the clerk will enter an order denying the motion.

6. If you file a post-sentence motion, and wish to appeal from the order deciding or denying the motion, a notice of appeal must be filed with the Criminal Clerk of Courts of Carbon County, within 30 days of that order.

7. Whether or not you file a post-sentence motion, all issues raised before or during trial are preserved for appeal.

8. You have the right to assistance of counsel in the preparation of a post-sentence motion or any appeal. If you are indigent, you have the right to proceed without payment of costs and with counsel appointed to represent you without charge. If you are now represented by the Public Defender's Office and continue to qualify for their services, that office would continue to represent you without cost.

9. If you qualify for bail and are released on bail after sentencing, a condition of release will be that you either file a post-sentence motion and perfect an appeal, or, when no post-sentence motion is filed, perfect an appeal with the time permitted by law.

THE COURTS

I affirm that I have read the above information completely, that I understand its full meaning, and that I have been given a copy of this document for my records and review.

Date: _____

Signature of Defendant

I, _____, Attorney for the above captioned defendant, state that I have advised my client of the meaning of this document and of his/her post-sentence and appeal rights as required by Pa.R.Crim.P. 1405 (3); that it is my belief that the defendant comprehends and understand those rights and what is set forth herein, and that Defendant has received a copy of this form.

Attorney for the Defendant

FORM "IV"

[Pa.B. Doc. No. 00-2211. Filed for public inspection December 22, 2000, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 261a, 266b, 268a AND 270a]

Universal Waste Rule; Mercury-Containing Devices

The Environmental Quality Board (Board) by this order amends Chapters 261a, 266b, 268a and 270a to add mercury-containing devices to the list of hazardous wastes that will be regulated as universal wastes. These amendments are set forth in Annex A.

This order was adopted by the Board at its meeting of October 17, 2000.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information contact Rick Shipman, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239, or Kurt Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This rulemaking is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The final rulemaking is being made under the authority of sections 105, 401—403 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20). Under sections 105, 401—403 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety and welfare, and the environment of this Commonwealth. Sections 105, 402 and 501 of The Clean Streams Law grant the Board the authority to adopt regulations that are necessary to protect the waters of this Commonwealth from pollution. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background and Summary*

The Universal Waste Rule is a set of environmentally protective, simplified standards for the management of certain hazardous wastes identified as universal wastes. The Universal Waste Rule is intended to encourage the recycling of certain classes of hazardous wastes while ensuring that the environment and the public's health, safety and welfare are adequately protected. Universal wastes share the following common characteristics:

a. They are frequently generated in a variety of settings including those industrial settings usually associated with hazardous wastes.

b. A vast community generates them, and the size of this community poses implementation difficulties for both those who are regulated and the regulatory agencies charged with implementing the hazardous waste program.

c. They may be present in significant volumes in nonhazardous waste management systems.

Currently, this Commonwealth's hazardous waste regulations recognize four classes of hazardous waste that may be managed under the Universal Waste Rule. The recognized classes of hazardous wastes that may be managed as universal wastes are certain batteries, certain pesticides, thermostats and universal waste lamps. Chapter 266b (relating to universal waste management) incorporates 40 CFR Part 273, Subpart G in its entirety. Subpart G includes a petition process that allows any person to petition for other wastes to be managed as universal wastes under Part 273. In addition, the Board's policy for handling rulemaking petitions is found in Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy). Chapter 23 is referenced in § 260a.20 (relating to rulemaking petitions) and governs petitions for rulemaking under the hazardous waste regulations.

On August 22, 1997, Advanced Environmental Recycling Corporation submitted two petitions to the Board. The petitions sought to add mercury-containing devices where the mercury is contained in an ampule and mercury-containing lamps to the list of hazardous wastes that may be managed in accordance with the universal waste rule standards. The Department published notice of its receipt of the petitions in the *Pennsylvania Bulletin* on October 11, 1997, with a 60-day public comment period. The Board accepted the petitions for study on October 21, 1997. The Solid Waste Advisory Committee (SWAC) reviewed the petitions on November 12, 1997. During the public comment period, there were no comments received with respect to the petition to add mercury-containing lamps. The Board received one comment in support of the petition to include mercury-containing devices.

In response to the petitions, the Department conducted a pilot project to allow mercury-containing lamps to be managed in accordance with the universal waste rule. During this 2-year project, the Department found no evidence of resulting environmental or health problems. In addition to the pilot project, the Department, with the aid of the Northeast Environmental Enforcement Project, surveyed all other states and the District of Columbia to determine which wastes each state manages as universal wastes. Survey results indicate that 22 states include mercury-containing lamps and five states include mercury-containing devices in their lists of universal wastes. There were no reported increases in hazardous waste management problems as a result of including either of these wastes in their lists of hazardous wastes managed as universal wastes.

Based on the results of the survey and continued dialogue with other states, the Board has concluded that allowing operators to manage mercury-containing devices in accordance with the universal waste standards will encourage recycling of these wastes without the potential for increased environmental or public health and safety

concern. Accordingly, the final rulemaking adds mercury-containing devices to the list of hazardous wastes that may be managed as universal wastes. Mercury-containing lamps are not included because the Environmental Protection Agency (EPA) on January 6, 2000, began allowing universal waste lamps—a category of waste that includes mercury-containing lamps—to be managed as universal waste. The Federal regulations are incorporated in Pennsylvania's regulations by reference.

The Solid Waste Advisory Committee (SWAC) approved this final rulemaking on June 8, 2000. A list of the members of the SWAC may be obtained from the contact persons listed in Section B of this Preamble.

A brief description of the amendments follows:

Section 261a.8. Requirements for universal waste.

This section is new and adds mercury-containing devices to the list of wastes subject to regulation under Chapter 266b (Universal Waste Management).

Section 266b.1. Incorporation by reference and scope.

This section is amended to include mercury-containing devices as hazardous wastes that may be managed as universal wastes in this Commonwealth. Presently, only wastes included in the federal program (mercury thermostats, mercury-containing lamps, batteries and certain pesticides) are regulated as universal wastes in this Commonwealth.

Section 266b.2. Applicability—mercury-containing devices.

The Board is adding this section to the regulations to clarify that the scope of the universal waste standards contained in Chapter 266b includes mercury-containing devices and that, with the exception of mercury-containing devices listed in subsection (b), all mercury-containing devices may be managed in accordance with the universal waste standards.

Section 266b.3. Definitions.

A definitions section is added to Chapter 266b to include the term "mercury-containing device."

Section 266b.11. Waste management for universal waste mercury-containing devices.

The Board is adding this section to establish requirements for small quantity handlers of mercury-containing devices. This change broadens the class of hazardous wastes that small quantity handlers of universal waste may manage as universal waste in this Commonwealth.

Section 266b.12. Labeling/marketing.

The Board is adding this section to the regulations to include requirements for small quantity handlers to label and mark containers that hold universal waste mercury-containing devices.

Section 266b.31. Waste management for universal waste mercury-containing devices.

This section is added to the regulations to establish requirements for large quantity handlers of mercury-containing devices. This section requires large quantity handlers to store universal waste mercury-containing devices in a manner that minimizes spillage of mercury and helps to ensure immediate containment and clean up of any broken mercury-containing devices. The provision also requires large quantity handlers to place any broken mercury-containing devices in a closed, structurally sound container.

Section 266b.32. Labeling/marketing.

The Board is adding this section to the regulations to require large quantity handlers of universal waste to properly mark and label containers that hold mercury-containing devices.

Section 268a.1. Incorporation by reference, purpose, scope and applicability.

Subsection (c) is added to § 268a.1 (relating to incorporation by reference, purpose, scope and applicability) to allow the management of mercury-containing devices as universal waste under the land disposal restrictions.

Section 270a.1. Incorporation by reference, scope and applicability.

Subsection (d) is added to § 270a.1 (relating to incorporation by reference, scope and applicability) to allow mercury-containing devices to be managed as universal waste under Chapter 270a (relating to hazardous waste permit program).

E. Summary of Comments and Responses on the Proposed Rulemaking

This rulemaking was published as proposed at 30 Pa.B. 1136 (February 26, 2000) with a 60-day comment period. The Department received one public comment supporting the proposed rulemaking as written. The Department also received written comments from the Independent Regulatory Review Commission (IRRC). IRRC's comments related to two subsections found in both §§ 266b.11 and 266b.31 (relating to waste management for universal waste mercury-containing devices). These sections cover small and large quantity handlers of universal waste, respectively. Paragraph (2)(v) of each section requires compliance with requirements of the Federal Occupational Health and Safety Administration. Paragraph (5) of each section requires compliance with the Commonwealth's regulations governing municipal and residual waste management, as appropriate. IRRC requested that the Board add to both sections the specific Federal or State citation to the requirements that a handler of universal wastes would have to meet. These sections now contain those specific citations.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the final regulation.

Benefits

Incorporating mercury-containing devices as universal wastes will prevent pollution by facilitating the recycling or proper disposal of these wastes. Currently, these wastes are frequently illegally disposed. Universal waste management requires the use of environmentally protective streamlined standards for the collection and transportation of these wastes. By making these management standards less complex and less costly to comply with, the recycling or proper disposal of these wastes is facilitated.

It is difficult to place a dollar value on the amount of savings incurred by generators who recycle mercury-containing devices. The volume of these wastes currently generated in this Commonwealth is unknown. Transportation costs associated with the shipment of these wastes to a permitted recycling facility will be reduced by eliminating the need for a licensed hazardous waste transporter. It is estimated that shipment of hazardous waste by a licensed hazardous waste transporter currently costs about 1.3 times the cost of sending a shipment by a common carrier. Costs associated with paperwork would also be reduced. Manifests and the

mailing costs associated with the proper distribution of the copies would not be required. A bill of lading would suffice.

More important than the cost savings is the potential decrease in unlawful disposal of mercury-containing devices in the nonhazardous waste stream. Reducing the costs associated with the consolidation and transportation of these wastes will promote the proper recycling of these wastes.

Compliance Costs

Compliance costs associated with universal waste standards are less than the compliance costs associated with full hazardous waste regulation. Shipping costs will be reduced through the use of a common carrier instead of a licensed hazardous waste transporter. Paperwork costs will also be reduced through the use of a bill of lading rather than a hazardous waste manifest. The manifest requires that copies of the manifest be mailed to various entities (generator, regulatory agency, and the like) while a bill of lading does not require this distribution.

Compliance Assistance Plan

As with the original Universal Waste Rule, the Department's compliance assistance efforts will take three forms. The Department will prepare fact sheets specifically addressing mercury-containing devices. The Department will also continue to work with the regulated community to explain how individuals, corporations or associations can establish collection systems for mercury-containing devices. Information concerning universal waste and the latest additions to this category will also be available on the Department's Internet site.

Paperwork Requirements

The addition of mercury-containing devices will reduce paperwork requirements. Destination facilities will have to maintain normal shipping documents that are used to track shipments as part of everyday operations. Manifests, which generally consist of more copies than bills of lading, and which require more extensive distribution, will no longer be required.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving State environmental protection goals. Pollution prevention is the reduction or elimination of pollution at its source. The Department encourages pollution prevention through the substitution of environmentally friendly materials, the more efficient use of raw materials, or the incorporation of energy efficient strategies. Although source reduction is preferred, these regulations should encourage pollution prevention because these wastes can be managed under a set of streamlined standards. These streamlined standards should promote the recycling of these wastes.

H. Sunset Review

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 3, 2000, the Department submitted a copy of the proposed amendments to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department

has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on November 13, 2000, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 16, 2000, and approved the final-form regulations.

J. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 30 Pa.B. 1136.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 261a, 266b, 268a and 270a, are amended by adding §§ 261a.8, 266b.2, 266b.3, 266b.11, 266b.12, 266b.31 and 266b.32 and amending §§ 266b.1, 268a.1 and 270a.1 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to the IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 6295 (December 2, 2000).)

Fiscal Note: Fiscal Note 7-347 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 261a.8. Requirements for universal waste.

In addition to the requirements incorporated by reference, mercury-containing devices as defined in § 266b.3 (relating to definitions) are included as wastes subject to regulation under Chapter 266b (relating to universal waste management).

CHAPTER 266b. UNIVERSAL WASTE MANAGEMENT

§ 266b.1. Incorporation by reference and scope.

(a) Except as expressly provided in this chapter, 40 CFR Part 273 (relating to standards for universal waste management) is incorporated by reference.

(b) In addition to the requirements incorporated by reference in 40 CFR 273.1(a) (relating to scope), mercury-containing devices as defined in § 266b.3 (relating to definitions) are included as wastes subject to regulation under this chapter.

(c) In addition to the requirements incorporated by reference in 40 CFR 273.4 (relating to applicability—mercury thermostats), mercury-containing devices as defined in § 266b.3 are included as wastes subject to the standards specified for thermostats in this chapter.

(d) In addition to the requirements incorporated by reference in 40 CFR 273.6 (relating to definitions), mercury-containing devices as defined in § 266b.3 are included as wastes listed in the definition of “universal waste.”

§ 266b.2. Applicability—mercury-containing devices.

(a) In addition to the requirements incorporated by reference in 40 CFR Part 273 (relating to standards for universal waste management), this chapter applies to persons managing mercury-containing devices as defined in § 266b.3 (relating to definitions), except those listed in subsection (b).

(b) This section does not apply to persons managing the following mercury-containing devices:

(1) Mercury-containing devices that are not yet wastes under Chapter 261a. Subsections (c) and (d) describe when mercury-containing devices become wastes.

(2) Mercury-containing devices that are not hazardous waste. A mercury-containing device is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste).

(c) A used mercury-containing device becomes a waste on the date it is discarded or sent for reclamation.

(d) An unused mercury-containing device becomes a waste on the date the handler discards it.

§ 266b.3. Definitions.

In addition to the definitions incorporated by reference in 40 CFR 273.6 (relating to definitions), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Mercury-containing device—A product or component of a product (excluding batteries) which contains elemental mercury that is necessary for operation of the device.

Subchapter B. SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE

§ 266b.11. Waste management for universal waste mercury-containing devices.

In addition to the requirements incorporated by reference in 40 CFR 273.13 (relating to waste management), the following apply:

(1) A small quantity handler of universal waste shall contain any universal waste mercury-containing device that shows evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the mercury-containing device and lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing devices if the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules.

(ii) Removes ampules only over or in a containment device (for example, a tray or pan sufficient to collect and contain mercury released from an ampule in case of breakage).

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34 (relating to accumulation time).

(iv) Immediately transfers mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34.

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable occupational safety and health administration exposure levels for mercury found in 29 CFR Part 1910, Subpart Z (relating to toxic and hazardous substances).

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers.

(vii) Stores removed ampules in closed, nonleaking containers that are in good condition.

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling and transportation.

(3) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing devices shall determine whether the following

exhibit a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste):

(i) Mercury or clean-up residues resulting from spills or leaks.

(ii) Other solid waste generated as a result of the removal of mercury-containing ampules (for example, remaining mercury device units).

(4) If the mercury, residue or other solid waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with applicable requirements of Chapters 261a—265a. The handler is considered the generator of the mercury, residues or other waste and is subject to Chapter 262a (relating to standards applicable to generators of hazardous waste).

(5) If the mercury, residue or other solid waste is not hazardous, the handler shall manage the waste in compliance with the applicable municipal or residual waste regulations found in Chapters 271—285 and 287—299 (relating to municipal waste management; and residual waste management).

§ 266b.12. Labeling/markings.

In addition to the requirements incorporated by reference in 40 CFR 273.14 (relating to labeling/markings), a small quantity handler of universal waste shall label each mercury-containing device, or a container in which the device is contained, with one of the following phrases: “universal waste mercury-containing device(s),” or “waste mercury-containing device(s)” or “used mercury-containing device(s).”

Subchapter C. LARGE QUANTITY HANDLERS OF UNIVERSAL WASTE

§ 266b.31. Waste management for universal waste mercury-containing devices.

In addition to the requirements incorporated by reference at 40 CFR 273.33 (relating to waste management), the following apply:

(1) A large quantity handler of universal waste shall contain any universal waste mercury-containing device that shows evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the mercury-containing device and lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing devices if the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules.

(ii) Removes ampules only over or in a containment device (for example, a tray or pan sufficient to collect and contain mercury released from an ampule in case of breakage).

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34 (relating to accumulation time).

(iv) Immediately transfers mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34.

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable occupational safety and health administration exposure levels for mercury found in 29 CFR Part 1910, Subpart Z (relating to toxic and hazardous substances).

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers.

(vii) Stores removed ampules in closed, nonleaking containers that are in good condition.

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling and transportation.

(3) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing devices shall determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste):

(i) Mercury or clean-up residues resulting from spills or leaks.

(ii) Other solid waste generated as a result of the removal of mercury-containing ampules (for example, remaining mercury device units).

(4) If the mercury, residue or other solid waste, exhibits a characteristic of hazardous waste, it shall be managed in compliance with applicable requirements of Chapters 261a—265a and Chapter 266a, Subchapters C—I. the handler is considered the generator of the mercury, residue or other waste and is subject to Chapter 262a (relating to standards applicable to generators of hazardous waste).

(5) If the mercury, residues or other solid waste is not hazardous, the handler shall manage the waste in compliance with the applicable municipal or residual waste regulations found in Chapters 271—285 and 287—299 (relating to municipal waste management; and residual waste management).

§ 266b.32. Labeling/markings.

In addition to the requirements incorporated by reference in 40 CFR 273.34 (relating to labeling/markings), a large quantity handler of universal waste shall label each mercury-containing device, or a container in which the device is contained, with one of the following phrases: “universal waste mercury-containing device(s),” or “waste mercury-containing device(s)” or “used mercury-containing device(s).”

CHAPTER 268a. LAND DISPOSAL RESTRICTIONS

Subchapter A. GENERAL

§ 268a.1. Incorporation by reference, purpose, scope and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 268 (relating to land disposal restrictions), except for 40 CFR 268.5, 268.6, 268.13, 268.42(b) and 268.44, and its appendices are incorporated by reference.

(b) Relative to the requirements incorporated by reference, the substitution of the term “EPA” in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 268.1(e)(3) (relating to purpose, scope and applicability), and the term “Administrator” in § 260a.3(a)(1) (relating to terminology

and citations related to Federal regulations) does not apply to 40 CFR 268.40(b) (relating to applicability of treatment standards).

(c) In addition to the requirements incorporated by reference in 40 CFR 268.1 (relating to purpose, scope and applicability), universal waste mercury-containing devices as described in § 266b.2 (relating to applicability—mercury-containing devices) shall also be managed in accordance with 40 CFR 268.1(f).

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

§ 270a.1. Incorporation by reference, scope and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program) and its appendices (relating to hazardous waste permit program) are incorporated by reference.

(b) Regarding the requirements incorporated by reference, the requirements of this chapter do not apply to an owner or operator of a facility specifically exempted under 40 CFR 270.1(c)(2) (relating to purpose and scope of these regulations) unless the facility is regulated under § 270a.60(b) (relating to permits by rule).

(c) The owner or operator of a facility eligible to operate under § 270a.60(b) is deemed to have a hazardous waste management permit if the applicable requirements of § 270a.60(b) are satisfied.

(d) In addition to the requirements incorporated by reference in 40 CFR 270.1 (relating to purpose and scope of these regulations), waste mercury-containing devices as described in § 266b.1 (relating to incorporation by reference and scope) shall be managed in accordance with 40 CFR 270.1(c)(2)(viii).

[Pa.B. Doc. No. 00-2212. Filed for public inspection December 22, 2000, 9:00 a.m.]

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[25 PA. CODE CHS. 971, 973, 975 AND 977]

Underground Storage Tank Indemnification Fund

The Underground Storage Tank Indemnification Board (Board) hereby proposes to delete Chapters 971, 973 and 975 (relating to fees of the underground storage tank indemnification fund; fee collection procedures; and heating oil tank optional program) and proposes to adopt Chapter 977 (relating to underground storage tank indemnification fund), in their place. The new chapter is proposed to read as set forth in Annex A. This chapter is proposed under the authority of the Storage Tank and Spill Prevention Act (act) (35 P. S. §§ 6021.101—6021.2104).

Purpose

Chapter 977 is proposed to consolidate the regulatory requirements into one chapter and to clarify and explain the establishment and collection of fees, the administration of claims, the Heating Oil Tank Optional Program and dispute resolution procedures.

Background

The Board has determined that the adoption of Chapter 977 will facilitate the regulated community's understanding of the Underground Storage Tank Indemnification Fund's (Fund) requirements. Also, legislative amendments to the act in 1998 have added new responsibilities to the Fund, which are explained in this proposed rulemaking.

Subchapter A (relating to general provisions) contains the definitions of those words that are used throughout the chapter. Additionally, the purpose, scope and applicability sections are found in Subchapter A.

Chapter 971 presently establishes the fees to be assessed to Fund participants. The provisions of Chapter 971 are being proposed for deletion, and similar provisions are being proposed for incorporation into Subchapter B (relating to fees and collection procedures). Chapter 973, Subchapter B also includes provisions of Chapter 973.

Chapter 975 currently establishes the requirements for owners or operators of underground heating oil tanks of 3,000 gallons capacity or greater that elect to participate in the Fund (HOT owners or operators). The provisions of Chapter 975 are being proposed for deletion, and similar provisions are being proposed for incorporation into Subchapter C of Chapter 977.

The Board is also proposing to add Subchapter C (relating to coverage and claims procedure), which addresses claims administration. The Board anticipates this subchapter will provide underground storage tank owners or operators (UST owners or operators), HOT owners or operators, certified companies and distributors insight into the Fund's claims procedure.

Lastly, the Board is proposing to add Subchapter F (relating to dispute procedures), to assist owners or operators of a UST or a HOT, certified companies and distributors in understanding the Fund's dispute resolution process.

The Board decided to include statutory language in its regulation in certain instances to assist the regulated community's understanding of the Board's requirements.

Subchapter A. (General Provisions)

Subchapter A provides common definitions used throughout the chapter.

Specifically, § 977.1 (relating to purpose) is being proposed to refer to the requirements that owners or operators of a UST or a HOT and certified companies must satisfy to become eligible for coverage from the Fund.

Section 977.2 (relating to scope) is being proposed to provide the regulated community with a general understanding of the areas addressed in this rulemaking. The section covers the establishment and collection of fees from owners or operators of a UST or a HOT and certified companies, as well as claims procedures that owners or operators of a UST or a HOT and certified companies must follow to pursue their claim. The Board is also proposing to add provisions to this regulation for HOT owners or operators relating to the Heating Oil Tank Optional Program. Additionally, the Board is proposing to promulgate standard dispute resolution procedures.

Section 977.3 (relating to applicability) is being added to identify who is affected by this regulation. Specifically, this proposed section applies to owners and operators of a UST or a HOT and certified companies. (For the purpose of this preamble, a "participant" shall include any of the following: an owner or operator of a UST or a HOT or a certified company as defined in the proposed rulemaking. A "UST" refers to an underground storage tank and a "HOT" refers to an underground heating oil tank as defined in the proposed regulations.) This section also addresses the responsibilities of distributors of regulated substances.

Section 977.4 (relating to definitions) is being added to assist the regulated community and other interested parties in understanding the words or phrases used in Chapter 977. These definitions are derived from several sources, including the existing regulations, statutory definitions and words used in the environmental industry and insurance market.

Subchapter B. (Fees and Collection Procedures)

Section 977.11 (relating to fund fees) states that fees are established and assessed by the Board to finance the Fund. The Board's statutory authority for establishing fees is found in section 705(d) of the act (35 P. S. § 6021.705(d)). Section 977.12 (relating to owner and operator fees) establishes fees which may be assessed upon owners or operators of a UST or a HOT, while § 977.19 (relating to certified company fees) establishes fees which may be assessed upon certified companies.

Section 977.12 provides the Board with the flexibility to lower fees as established in this section by notifying UST owners or operators at least 30 days prior to the scheduled fee change, however, the act limits fee changes to once annually. This fee will also apply to HOT owners and operators. Additionally, the Board is adding language that allows flexibility to change the fee assessed on regulated substances by publishing a notice in the *Pennsylvania Bulletin*. Specifically, § 977.12(e) is added indicating that the Board will publish a list of any changes regarding which substances are assessed which fees.

Section 977.12(c) is proposed to allow the Fund to limit the total fees paid by owners and operators of nonretail bulk storage or gasoline tanks used for wholesale distribution to no more than the \$5,000 annual limit as

required by the act. The remaining provisions of § 977.12 are similar to the provisions found in Chapter 971, which is being proposed for deletion.

Section 977.13 (relating to tank fee payment procedure) proposes to incorporate language which is similar to language currently found in § 973.3 without any substantive or procedural changes.

Section 977.14 (relating to gallon fee payment procedures) proposes to incorporate language which is similar to language in § 973.4. The Board also proposes adding language in § 977.14(d) to address the statutory change relating to distributors located outside the territorial boundaries of this Commonwealth. Section 705(e) of the act allows distributors located outside this Commonwealth to collect and remit the gallon fees; however, the distributors that fall into this category must post a performance bond in the amount of \$1 million.

Section 977.15 (relating to the gallon fee discount for distributors) is similar to language currently found in § 973.5. There are no procedural or substantive changes to this proposed section.

Section 977.16 (relating to posting and collecting security) is similar to language currently found in § 973.8. There have been no procedural or substantive changes made to this section.

Section 977.17 (relating to security for payment of gallon fees) is similar to the language currently found in § 973.9. There have been no procedural or substantive changes made to this section.

Section 977.18 (relating to capacity fee payment procedure) is similar to language currently found in § 973.6. Previously, the Fund used the term "invoice"; it will now use the term "statement." Generally, the Fund will use a database of pertinent information as maintained by the Department of Environmental Protection (Department) to prepare statements. These statements will be forwarded to the participant for payment. The statements will provide sufficient detail to show how fees are determined.

Section 977.19 (relating to certified company fees) is being proposed as the result of an amendment to the act, specifically the act of January 30, 1998 (P. L. 46, No. 13) (Act 13). Act 13 requires the Board to provide coverage to certified companies which is financed by fees to be assessed upon these companies. The Board, as required by law, performed an actuarial evaluation of liabilities under this program and has adopted the fee structure as found in § 977.19. To accomplish this task, the Board established a subcommittee comprised of three Board members, Fund staff, and Department regulatory staff to recommend a fee structure, billing mechanism and fee levels. Additionally, the Board hired William M. Mercer, Inc., consulting actuaries, to perform an actuarial evaluation of the liabilities associated with this new provision. At the September 1998 Board meeting, the subcommittee's recommendations were submitted to the Board. The Board unanimously approved the recommendations and ordered that they be incorporated in this proposed rulemaking.

Specifically, the Board has decided that the fees for certified companies will be delineated into three major categories. The following fees may be assessed: a certified company fee assessed at a maximum of \$2,000 per year on all certified companies; a certification fee assessed on the tank installer when an installation, major modification, or removal activity is performed; and an activity fee which is assessed at a maximum rate of \$100 per activity.

The Department's database of certified companies and installers will be utilized by the Fund in assessing fees.

Section 977.20 (relating to certified company fee, certification fee and activity fee payment procedures), is proposed as a result of Act 13, which provides the Fund authority to assess fees and provide coverage to certified companies.

Section 977.20(a) proposes to establish the procedures to be used by the certified companies that are required to pay the certified and certification fees. This process is similar to the capacity fee payment procedures proposed to be found in § 977.18. The Fund will use the existing certified tank installer and company database maintained by the Department to prepare and forward statements to the certified companies. The certified company shall pay the fee shown on the statement.

Section 977.20(b) proposes to outline the process by which certified companies shall remit payments of their activity fees to the Fund. In this particular section, the Board requires the certified companies that perform the installations, major modifications, or removals to pay the fees to the Fund. The certified companies shall submit the fees using a form provided by the Fund. These forms for activities shall be submitted with the activity fee 30 days prior to the inception of the particular activity identified on the form. This prior notification will allow uninterrupted coverage for the certified companies during the activity for which this fee is being assessed to ensure the certified companies maintain their coverage in the event that a loss from the activity occurs during the installation, major modification or removal of the tank.

Section 977.21 (relating to penalty for late payment of fees) proposes to incorporate language similar to language presently found in § 973.3, relating to penalties for late payment of fees. The only change to this section from its currently published format is that the Board is given discretion in assessing a late penalty for fees. Prior to Act 13, the Board was required to assess a penalty of up to 5% of the amount due on a monthly basis.

Section 977.22 (relating to fee dispute procedure) proposes to identify the rights of a participant, as well as a distributor, who disputes the amount of an assessed or collected fee. This section incorporates similar provisions currently found in § 973.7 relating to fee dispute procedures, and also refers the reader to § 977.51 (relating to dispute procedures) for specific guidelines for presenting an appeal for resolving disputes.

Section 977.23 (relating to recordkeeping responsibilities) is similar to the language currently found in § 973.11. The only modifications made to § 977.23 clarify the types of records that the certified companies shall retain.

Section 977.24 (relating to the audit of records) proposes to incorporate language similar to language currently found in § 973.12. Language has been added to allow the Fund to audit the records of certified companies because they now receive coverage under the Fund.

Subchapter C. (Coverage and Claims Procedure)

Since inception of the Fund's coverage on February 1, 1994, the Fund has handled approximately 2,400 claims for corrective action and for property damage and bodily injury. The Fund established a well-defined and efficient program for handling claims that is designed to insure uniform claims handling. The Board is taking this opportunity to publish the Fund's procedure to assist the regulated community in understanding the coverage claims procedure.

Subchapter C establishes the claims procedure as detailed in Annex A. This subchapter also explains what a participant must file to have a claim paid by the Fund. This subchapter is necessary to clarify the coverage as outlined in the act and to encourage early reporting of claims which will expedite cleanup and lower costs.

Section 977.31 (relating to eligibility requirements) is being proposed to publish the five existing statutory eligibility requirements as found in section 706 of the act (35 P. S. 6021.706), and add additional eligibility requirements. These new requirements include that the participant cooperate with the Fund in investigating a claim and in any litigation that may occur as a result of a release from a storage tank. Cooperation is essential if the Fund is to be effective and efficient in claims handling. Another requirement for eligibility is that the participant meet the notification requirements as proposed in § 977.34 (relating to claims reporting). Early claim notification assists the Fund in documenting facts and other costs and identifying potential third-party actions. Early notification allows facts to be collected while information is still fresh and allows for swift intervention to minimize the environmental impact. Section 977.31 also proposes to explain when a certified company, performing a tank handling activity on a UST or a HOT, is eligible for coverage.

Section 977.32 (relating to participant cooperation) explains the type of cooperation that is expected of a participant. Generally, cooperation requires that the participant assist the Fund during the eligibility determination process, claims investigation, the defense of a third-party action and any subrogation actions. This section further provides that a lack of cooperation may result in denial of a claim or cessation of further payments on a claim. These requirements are prudent business practices because they assist the Fund in processing claims effectively and efficiently for the benefit of the participant.

Section 977.33 (relating to Fund coverage and exclusions) is being proposed to explain the types of costs that are covered by the Fund. This language is necessary to effectuate the purposes of the Fund and to avoid any confusion on the part of the participant. This section provides a succinct description of the coverage available for corrective action and for liability for property damage and bodily injury claims. This section outlines the limitations on coverage, including deductibles, limits on payment and exclusions.

Certain exclusions from coverage are being proposed in this section. For example, the regulation bars coverage for any release caused by the intentional acts of a participant. Contractual obligations whereby there is an assumption of liability are also not covered, nor are default judgments. Any portion of a release which occurred before February 1, 1994, is not covered.

Section 977.34 (relating to claims reporting) explains the responsibility of a participant to notify the Fund of any potentially covered releases. In this section, a participant is required to notify the Fund no later than 60 days after confirmation of a release as explained in the regulation. This proposal provides the participant adequate time to report a claim. The 60-day notification also allows the Fund to promptly begin investigations. Currently, there is no claims reporting requirement and there have been instances where claims are reported years after the release actually occurred to the detriment of the Fund.

Section 977.35 (relating to third-party suit) outlines procedures for the participant to follow in the event of a

third-party claim. This section also clarifies the Fund's role in handling third-party suits brought against a participant. The Board believes that defending third-party claims is a proper cost containment tool and should be used wisely. Specifically, this proposed section provides guidance as to what type of information the participant must provide to assist the Fund in its defense of any third-party suits. This section establishes the Fund's authority to settle any claim presented by the third-party for bodily injury or property damage. Also, this section establishes the Fund's role in assigning legal counsel where appropriate. In addition, this section limits the Fund's obligation to defend any third-party actions when limits of liability have been exhausted for corrective action and third party settlements.

Section 977.36 (relating to corrective action payments) establishes the process by which a participant may receive payments for corrective actions taken as a result of a release from a UST or a HOT. This section also establishes that corrective action costs must be reasonable and necessary. It clarifies what type of information must be submitted so that the Fund can make informed reimbursement decisions.

Section 977.37 (relating to priority of payment) explains that the Fund may prioritize reimbursements to take into account those items that directly impact on corrective action costs and human health.

Section 977.38 (relating to primary coverage) explains that the Fund is primary to all other coverage with respect to eligible claims for personal injury and property damage from a release. Additionally, this section explains that when the Fund determines that a certified company is responsible for a release that is the subject of a claim, the coverage of a certified company will be exhausted before the coverage of an owner or operator of a UST or a HOT is applied. This section will assist the insurance industry, the participant and the Fund in coordinating benefits.

Section 977.39 (relating to claim dispute procedures) outlines the procedures necessary for a participant, or a distributor, to appeal an adverse decision from the Fund. This section references the standard procedures found in § 977.51.

Section 977.40 (relating to subrogation for corrective action costs) explains that the Fund is subrogated to the rights of recovery against any person for the costs of remediation. It also states that if an owner or operator does not comply with the requirements of § 977.32, the Fund may deny any further payments on a claim.

Subchapter D. (Heating Oil Tank Optional Program)

Subchapter D is similar to the provisions currently found in Chapter 975.

Section 977.51 (relating to election requirements) addresses the procedure for HOT owners or operators to participate in the Fund. This section incorporates similar language as currently found in § 975.3, and adds an additional requirement in § 977.12, allowing the Board to require that fees be paid under this program.

Section 977.52 (relating to the coverage period) is similar to the language currently found in § 975.4. In this section there are no substantive changes.

Section 977.53 (relating to cancellation of coverage) is similar to the language currently found in § 975.5. In this section there are no substantive changes.

Section 977.54 (relating to dispute procedures) is similar to language currently found in § 975.6. In this section, HOT owners or operators that have a dispute concerning the Heating Oil Tank Optional Program may seek redress by filing a complaint using the procedures found in § 977.61.

Subchapter F. (Dispute Procedures)

Subchapter F is similar to language currently found in Chapters 973 and 975. The procedure in this subchapter shall be followed by a participant or a distributor that wants to appeal a decision of the Fund.

Section 977.61 (relating to dispute procedures) is similar to the procedures currently found in Chapters 973 and 975. Certified companies and distributors may utilize the dispute procedures in keeping with the statutory requirements. A 35-day period has been established during which a participant or distributor may request an appeal once the Fund makes an eligibility decision. The 35-day time frame begins upon the mailing date of the Fund's decision. Further, appeals of the Executive Director's decision to the Board shall be made within 15 days. The 15-day time frame begins upon the mailing date of the Executive Director's decision letter.

This section also requires a participant to pay fees in full during the pendency of any appeal. If the complainants prevail in a fee dispute, fees paid plus interest will be refunded. The interest will be computed at the rate determined by the Secretary of Revenue for interest payments for overdue taxes under section 806 of the Fiscal Code (72 P. S. § 806). This section provides clear guidance on how to pursue an appeal involving fee disputes and to ensure that coverage for an eligible claimant remains in place during the pendency of the dispute.

Affected Parties

A participant or a distributor transacting business in this Commonwealth is affected by this proposed rulemaking. There is a fiscal impact as a result of this proposed rulemaking relating to fees. This proposed rulemaking will have minimal impact on owners and operators as they have previously been paying fees and receiving benefits.

Fiscal Impact

State Government

State government will not be affected by this rulemaking since the program is funded entirely by fees paid by participants. No tax dollars are used to support this program. The fees paid by participants cover both claims and administrative expenses.

General Public

The general public may be minimally affected to the extent that fees are assessed, since the general public is a consumer of goods and services provided by owners and operators of a UST or a HOT who utilize the services of certified companies. Theoretically, any fees imposed by this rulemaking may add additional costs which in turn may lead to higher prices to consumers. However, the competitive market will likely serve as a buffer to any increase to consumers.

Political Subdivisions

Political subdivisions are directly affected by the implementation of this proposed rulemaking since they constitute a portion of the UST and HOT owner and operator community. The political subdivision may pay fees based upon the types of product stored in their underground storage tanks and the cost of necessary services supplied by certified companies to keep their tank systems in compliance with Federal and State mandates. However, the political subdivisions receive benefits from the fees. If a release occurs, the political subdivision may receive up to \$1 million to clean the environment and minimize adverse impact to third parties.

Private Sector

Owners and operators of a UST or a HOT are directly affected by the implementation of these regulations since they constitute a portion of the regulated community. The private sector may pay fees based upon the types of product stored in their underground storage tanks and the cost of necessary services supplied by certified companies. To offset this increase in costs the private sector shall receive up to \$1 million in coverage in the event of a release.

Paperwork

This proposed rulemaking will affect all UST owners and operators and certified companies in this Commonwealth. There will be additional paperwork relating to payment of fees and claims made by a participant. However, the Fund is developing electronic commerce capabilities to minimize paperwork burdens. A participant can choose which method (hard copy or electronic commerce) best meets the participant's individual business needs for paying fees, reviewing transactions and facility information, and communicating with the Fund.

Effectiveness/Sunset Date

This proposed rulemaking will become effective upon final adoption and publication in the *Pennsylvania Bulletin* as a final rulemaking. No sunset date is being assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions or comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 12, 2000, the Insurance Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC). In accordance with section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), the Insurance Department did not submit the proposed rulemaking to the Chairpersons of the Senate Committee on Environmental Resources and Energy and the House Environmental Resources and Energy Committee due to the adjournment of the legislative session sine die. The Insurance Department will submit the proposed rulemaking to the standing committees, once designated, in accordance to section 5(a) and (e).

In addition to the submitted proposed rulemaking, the Insurance Department has provided IRRC with a copy of a detailed Regulatory Analysis Form prepared by the

agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of the material is available to the public upon request.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the Insurance Department within 10 days after the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final-form publication of the rulemaking.

M. DIANE KOKEN,
Commissioner

E. BRUCE SELLER,
*Insurance Chair; Underground Storage Tank
Indemnification Board*

Fiscal Note: 11-179. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART VIII. UNDERGROUND STORAGE TANK INDEMNIFICATION BOARD

(*Editor's Note:* As part of this proposed rulemaking, the Board proposes to delete the following sections which appear in 25 Pa. Code pages 971-1—975-2, serial pages (222039)—(222042), (199559)—(199566), (222043), (222045) and (222046).

§§ 971.1—971.4. (Reserved).

§§ 973.1—973.12. (Reserved).

§§ 975.1—975.6. (Reserved).

The following chapter is new and is printed in regular type to enhance readability.)

CHAPTER 977. UNDERGROUND STORAGE TANK INDEMNIFICATION FUND

Subchapter A. GENERAL PROVISIONS

Sec.	Purpose.
977.1.	Scope.
977.2.	Applicability.
977.3.	Definitions.
977.4.	

§ 977.1. Purpose.

This chapter sets forth the requirements that participants in the Fund shall satisfy to be eligible for Fund coverage of corrective action costs, bodily injury and property damage.

§ 977.2. Scope.

This chapter addresses the establishment and collection of fees, the claims procedures, the optional heating oil tank program and the dispute procedures of the Fund.

§ 977.3. Applicability.

This chapter applies to owners and operators of USTs, owners and operators of HOTs that elect to participate in the Heating Oil Tank Optional Program, certified companies and distributors.

§ 977.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Storage Tank and Spill Prevention Act (35 P. S. §§ 6021.101—6021.2104).

Activity—Installing, making major modifications to or removing all or part of a storage tank system or storage tank facility.

Activity fee—The per tank fee assessed upon a certified company for all activities on a UST or a HOT calculated in accordance with section 705(d)(1) of the act (35 P. S. §§ 6021.705(d)(1)) and § 977.19 (relating to certified company fees).

Board—The Underground Storage Tank Indemnification Board.

Bodily injury—Physical injury, sickness, disease or death sustained by a third party, resulting from a release from a UST or a HOT, or a certified company activity.

Capacity fee—The fee assessed upon an owner or operator, calculated in accordance with section 705(d)(2) of the act and § 977.18 (relating to capacity fee payment procedures).

Certification fee—The annual fee assessed upon a certified company which performs tank-handling activities on a UST, calculated in accordance with section 705(d)(1) of the act and § 977.20(a) (relating to certified company fee, certification fee and activity fee payment procedures).

Certified company—An entity, including, but not limited to, a sole proprietorship, a partnership or a corporation, which is authorized by this title or the DEP to conduct tank-handling activities, tightness testing activities or inspection activities using certified installers, certified inspectors or both.

Certified company fee—The fee assessed upon a certified company calculated in accordance with section 705(d)(1) of the act and § 977.20(a).

Certified tank installer—A person certified by the DEP to perform tank-handling activities on a UST or a HOT.

Claim—A request for coverage and reimbursement from the Fund which is made by the participant that has incurred, or will incur, corrective action costs or liability for bodily injury or property damage caused by a release.

Claim investigation—The obtaining and reviewing of information concerning a reported claim including:

- (i) Verbal or written statements.
- (ii) Conducting on site visits and any information obtained from these visits.
- (iii) Any other relevant information.

Corrective action costs—Reasonable and necessary expenses for corrective action, as defined in the act, incurred by an owner or operator in response to a confirmed underground storage tank release as specified in regulations promulgated by the DEP. The term does not include the cost of upgrading, routine inspections, investigations or permit activities not associated with a release.

DEP—The Department of Environmental Protection of the Commonwealth.

Defense costs—Expenses incurred by the Fund in the investigation, settlement or defense of a specific claim, including fees of attorneys that the Fund retains and other litigation expenses.

Discount—The amount retained by distributors who collect the gallon fee in accordance with § 977.22 (relating to fee dispute procedure).

Distributor—An intermediary that retains title to a regulated substance prior to delivery, and which delivers that substance into a UST.

Distributor delivery invoice—The document supplied by the distributor to a UST owner or operator which identifies the number of gallons of regulated substance delivered into a UST and the total gallon fee to be paid.

EPA—The United States Environmental Protection Agency.

Fund—The Underground Storage Tank Indemnification Fund.

Gallon fee—The fee assessed upon a UST owner or operator on regulated substances placed into a UST. The gallon fee is calculated by multiplying the number of gallons of regulated substance entering a UST by the unit charge in § 977.12 (relating to owner and operator fees).

Gallon fee statement—A form supplied by the Fund to a distributor or to a UST owner or operator upon which the assessed gallon fee is noted, and which is returned to the Fund with the remittance.

HOT—Heating oil tank—An underground heating oil tank not regulated under regulations promulgated by DEP, with a capacity of 3,000 gallons or greater used for storing heating oil products for use on the premises.

Nonretail bulk storage UST—A UST which is not used for dispensing gasoline to end-users.

Operator—Includes any of the following:

- (i) A person who manages, supervises, alters, controls, or has responsibility for the operation of a UST.
- (ii) A person who manages, supervises, alters, controls, or has responsibility for the operation of a HOT, and elects to participate in the Heating Oil Tank Optional Program.

Owner—Includes any of the following:

- (i) A person who owns a UST storing regulated substances on or after November 8, 1984.
- (ii) A person who owns a UST at the time all regulated substances were removed when removal occurred prior to November 8, 1984.
- (iii) A person who owns a HOT and elects to participate in the Heating Oil Tank Optional Program.

Participant—Includes any of the following:

- (i) An owner or operator of a UST.
- (ii) An owner or operator of a HOT.
- (iii) A certified company.

Property damage—Damage to the property of third parties that includes:

- (i) Destruction of, contamination of, or other physical harm to real property or tangible personal property, including the resulting loss of use of that property which occurred from a release from a UST on or after February 1, 1994, or a release from a HOT on or after the date of election of coverage.
- (ii) Loss of use of real property or tangible personal property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release from a UST which occurred on or after February 1, 1994, or a release from a HOT on or after the date of election of coverage.

Regulated substance—

- (i) An element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health, welfare or the environment, and which is:

(A) Any substance defined as a hazardous substance in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. § 9601), but not including substances regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6921–6931).

(B) Petroleum, including crude oil or a fraction thereof and hydrocarbons which are liquid at standard conditions of temperature and pressure (60° and 14.7 pounds per square inch absolute), including oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other nonhazardous wastes and crude oils, gasoline, and kerosene.

(C) Other substances determined by DEP by regulation whose containment, storage, use or dispensing may present a hazard to the public health and safety or the environment, but not including gaseous substances used exclusively for the administration of medical care.

- (ii) The term does not include the storage or use of animal waste in normal agricultural practices.

Release—

(i) Spilling, leaking, emitting, discharging, escaping, leaching or disposing from a UST or a HOT into surface waters and groundwaters of this Commonwealth or soils or subsurface soils in an amount equal to or greater than the reportable release quantity determined under section 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. § 9602), and regulations promulgated thereunder, or an amount equal to or greater than a discharge as defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1321), and regulations promulgated thereunder.

(ii) The term also includes any spillage, leaking, emitting, discharging, escaping, leaching, or disposing from a UST or a HOT into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater.

Security—A bond of the Commonwealth or the United States, a surety bond or an irrevocable letter of credit.

Statement—A document supplied by the Fund to the participant which documents the appropriate fees.

Subrogation—The right of the Fund to pursue a claim against a third party when the participant has been indemnified by the Fund.

Suit—A civil action instituted against the participant for bodily injury or property damage resulting from a release.

Tank fee—The fee assessed upon a UST owner or operator whose tanks store regulated substances, which is calculated by multiplying the number of the USTs owned or operated by the per tank charge in § 977.12.

UST—Underground Storage Tank—

- (i) Any one or a combination of tanks (including underground pipes connected thereto) which are used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground.

(ii) The term does not include:

(A) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(B) Tanks used for storing heating oil for consumptive use on the premises where stored unless they are specifically required to be regulated by Federal law.

(C) A septic or other subsurface sewage treatment tank.

(D) A pipeline facility (including gathering lines) regulated under:

(I) The Natural Gas Pipeline Safety Act of 1968, Pub.L. No. 90-481, 82 Stat. 720 (49 U.S.C.A. App. §§ 1671—1687).

(II) The Hazardous Liquid Pipeline Safety Act of 1979, Pub.L. No. 96-129, 93 Stat. 989 (49 U.S.C.A. §§ 2001—2015).

(E) An interstate or intrastate pipeline facility regulated under state laws comparable to the provisions of law in subparagraph (iv).

(F) Surface impoundments, pits, ponds or lagoons.

(G) Stormwater or wastewater collection systems.

(H) Flow-through process tanks.

(I) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.

(J) Storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft or tunnel) if the tank is situated upon or above the surface of the floor.

(K) Except for tanks subject to the requirements of 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of UST), tanks regulated under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), including piping, tanks, collection and treatment systems used for leachate, methane gas and methane gas condensate management.

(L) A UST whose capacity is 110 gallons or less.

(M) Tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A §§ 2011—2297).

(N) A wastewater treatment tank system.

(O) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(P) A UST that contains a de minimis concentration of regulated substances.

(Q) An emergency spill or overflow containment UST system that is expeditiously emptied after use.

(R) A UST that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A (relating to general design criteria for nuclear power plants).

(S) Other tanks excluded by policy or regulations promulgated under the act.

Waste oils—An accumulation of oils from several sources, including the following:

(i) Water emulsified in oil.

(ii) The reaction of incompatible oils that have been mixed.

(iii) Foul or wet oil and sludge received from receipt operations.

(iv) Sludges or bottom sediment accumulating in the bottoms of storage tanks after a significant period of time.

(v) Oil which has been spilled and then recovered from sumps, basins or other spaces.

(vi) Oil contaminated by gasoline or other petroleum products.

Wholesale distribution UST—A UST used for intermediate storage of gasoline prior to delivery into a UST that directly serves end users.

Subchapter B. FEES AND COLLECTION PROCEDURES

Sec.

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§ 977.11. Fund fees.

The fees in this subchapter are established and assessed by the Board to finance the Fund.

§ 977.12. Owner and operator fees.

(a) *Maximum fees.* The Board may charge and modify fees, not to exceed the maximum fees established in this section, based on an annual actuarial review. The Fund shall publish the annual fee in the *Pennsylvania Bulletin* at least 30 days prior to the effective date of the scheduled fee change.

(b) *Tank and gallon fees.* A UST owner or operator storing gasoline, new motor oil, hazardous substances, gasohol, aviation fuel, mixture, farm diesel and other types of substances based on the tank registration information maintained by DEP may be assessed the following fees:

(1) *Tank fee.* A tank fee not to exceed a maximum fee of \$100 per UST per year.

(2) *Gallon fee.* A gallon fee on all regulated substances entering a UST not to exceed a maximum fee of 2¢ per gallon.

(c) *Nonretail bulk storage.* Total fees paid by an owner or operator of a nonretail bulk storage or wholesale distribution UST storing gasoline are calculated using the method described in subsection (b) and are capped at \$5,000 per UST per year in accordance with section 705(d)(3) of the act (35 P.S. § 6021.705(d)(3)).

(d) *Capacity fee.* An owner or operator which stores regulated substances including diesel, heating oil, used motor oil, kerosene and unknown substances based on the tank registration information maintained by the DEP may be assessed a capacity fee not to exceed a maximum fee of 15¢ per gallon of capacity, which amount is calculated in accordance with section 705(d)(2) of the act.

(e) *Changes to applicability of fees to particular substances.* The Board may establish, by publishing a notice in the *Pennsylvania Bulletin*, any changes regarding which substances are assessed a tank fee, a capacity fee or a gallon fee.

§ 977.13. Tank fee payment procedure.

(a) The Board may charge a per tank fee to a UST owner or operator.

(b) The tank fee shall be calculated as set forth in § 977.12 (relating to owner and operator fees)

(c) The UST owner or operator shall pay the tank fee on or before the fee payment due date on the statement.

§ 977.14. Gallon fee payment procedure.

(a) A distributor shall collect any gallon fee directly from a UST owner or operator. If a UST owner or operator pays the fee, but a distributor fails to remit the fee, a UST owner or operator, upon proof of payment, will be eligible for Fund coverage. A distributor who fails or refuses to remit fees shall be subject to sanctions as provided in § 977.16 (relating to posting and collecting security).

(b) On or before the last day of each month, a distributor shall remit to the Fund any collected gallon fees, less the discount described in § 977.15 (relating to gallon fee discount for distributors). A distributor shall submit a completed gallon fee statement to the Fund on a monthly basis to document the amount of product distributed. The gallon fee will be based on the amount of regulated substance delivered into a UST by a distributor in the preceding month.

(c) A distributor shall record the number of gallons delivered on the delivery invoice, the receipt or another form which documents the date and amount of regulated substance delivered. A distributor shall provide a copy of this document to a UST owner or operator at the time of delivery. The number of gallons recorded on each delivery invoice shall be used to calculate the total number of gallons on the gallon fee report form for the preceding month. A distributor shall use the total of gallons recorded to calculate the gallon fee.

(d) A distributor located outside the territorial boundaries of this Commonwealth may collect and remit gallon fees upon proof that a performance bond by a licensed company has been secured and maintained in the amount of \$1 million. If a UST owner or operator is using an out-of-State distributor that chooses not to collect the fees, the UST owner or operator shall notify the Fund and shall remit fees to the Fund.

(e) A UST owner or operator who pays the gallon fee to the Fund shall pay the fees directly to the Fund and record deliveries in accordance with subsections (a)—(d). A UST owner or operator who does not receive regulated substances from a distributor shall notify the Fund and pay the fee directly to the Fund.

(f) If a UST owner or operator fails or refuses to pay the gallon fee, by the due date, a distributor shall provide the Board in writing with the following information: the name and address of the owner or operator, the street address of the UST location, the point of contact for the distributor, product delivery dates and the amount of gallon fee not paid.

(g) If the Board determines that a distributor is ineligible, in accordance with § 977.16 to collect and remit the gallon fee in accordance with § 977.12 (relating to owner and operator fees), a UST owner or operator shall, after

notification of the distributor's status by the Board, pay the fee directly to the Fund following the procedures in subsections (a)—(e).

(h) A UST owner or operator with tanks used for nonretail bulk storage or wholesale distribution of gasoline is not required to pay more than \$5,000 per tank per year in per gallon fees. See section 705(d)(3) of the act (35 P. S. § 6021.705(d)(3)).

§ 977.15. Gallon fee discount for distributors.

(a) The net monthly gallon fee remitted to the Fund by a distributor under § 977.14 (relating to gallon fee payment procedures) shall be the gallon fee less a discount computed as follows: 1% multiplied by the gallon fee collected.

(b) The gallon fee discount will not be allowed when the gallon fee payment is received by the Fund after the due date.

§ 977.16. Posting and collecting security.

(a) *Requirement to post security.*

(1) A distributor shall remit fees on or before the last day of each month. Fees shall be calculated based on the quantity of the regulated substance distributed by the distributor in the preceding month. A distributor shall be considered delinquent if fees are not received by the Fund within 45 days after the end of the calendar month in which the product was delivered.

(2) A distributor shall post security for a minimum of 12 months following a delinquency.

(3) Following the posting of security, the Fund will have recourse against the security if the distributor fails to timely remit to the Fund, all or part of the gallon fee due to the Fund.

(4) The form of security and the calculation of the amount of security shall be as set forth in § 977.17 (relating to security for payment of gallon fees).

(b) *Collecting posted security.*

(1) For any delinquent payment the Fund may make demand for payment upon the distributor's surety or guarantor for payment of the full amount due the Fund.

(2) The distributor shall post replacement security within 5 days after collection of the posted security. A distributor who fails or refuses to post replacement security is ineligible to collect the fees of the Fund.

§ 977.17. Security for payment of gallon fee.

(a) The value of the security posted by a distributor shall be calculated by multiplying the gallon fee as set forth in § 977.12 (b)(ii) (relating to owner and operator fees) by the number of gallons of regulated substance (except heating oil and diesel fuel products) distributed over the 3-month period in the past calendar year in which the distributor distributed the greatest volume of regulated substance.

(b) The Fund will accept only payment bonds issued by surety companies licensed to do business in this Commonwealth.

(c) Negotiable securities of the United States or the Commonwealth may be used in lieu of a surety bond if the face value of the security is not less than the amount of the security required. The securities shall be held by the State Treasurer.

(d) Bank letters of credit submitted as collateral shall be subject to the following conditions:

(1) The letter of credit shall be a standby or guarantee letter of credit issued by a Federally insured or equivalently protected bank or banking institution authorized to do business in this Commonwealth.

(2) The letter of credit shall be irrevocable and shall be so designated. The letter of credit shall name the Fund as the beneficiary and shall be payable to the Fund. The Fund may accept a letter of credit for which a limited time period is stated if the following conditions are met and are stated in the letter:

(i) The letter of credit is automatically renewable for additional time periods unless the bank gives at least 90 days prior written notice to both the Fund and the owner or operator, of its intent to terminate the letter of credit at the end of the current time period.

(ii) The Fund may draw upon the letter of credit before the end of its time period, if the distributor is required to post security under § 977.16 (relating to posting and collecting security) and has failed to replace the letter of credit with other acceptable means of compliance in accordance with section 215 of the Oil and Gas Act (58 P. S. §§ 601.215) within 30 days of the bank's notice to terminate the letter of credit.

(iii) A distributor will notify the Fund within 30 days of the bank's notice to terminate the letter of credit.

(3) The letter of credit shall be governed by the *Uniform Custom and Priorities for Accounting Credits*, International Chamber of Commerce, Publication Number 400 (1983 edition), and the laws of the Commonwealth, including 13 Pa.C.S. § 5101 (relating to letters of credit).

(4) The Fund will not accept a letter of credit from a bank, which has failed or refused to pay, in full, on a letter of credit previously submitted as collateral to the Fund.

(5) The Fund will not accept a letter of credit that contains rights of set-off, or liens in favor of the issuing bank.

(e) If the Fund collects an amount under the letter of credit in excess of the fees due, following failure of the distributor to replace the letter of credit after demand by the Fund, the Fund will hold the excess proceeds as cash collateral. The distributor may obtain the excess after the distributor has submitted, and the Fund has approved, a bond or other form of security posted in compliance with this section.

§ 977.18. Capacity fee payment procedure.

(a) The Fund may charge the capacity fee to an owner or operator.

(b) The capacity fee shall be calculated as set forth in § 977.12(d) (relating to owner and operator fees).

(c) An owner or operator shall pay, on or before the due date indicated on the statement, the full amount of the capacity fee or a monthly payment of 1/12 of the total capacity fee due.

§ 977.19. Certified company fees.

(a) *Maximum fee.* The Board may charge and modify fees, not to exceed the maximum fees established in this section, based on an annual actuarial review. The Fund shall publish the annual fee in the *Pennsylvania Bulletin* at least 30 days prior to the effective date of the scheduled fee change.

(b) *Certified company fee.* Certified companies may be required to pay to the Fund a certified company fee not to exceed a maximum fee of \$2,000 per year.

(c) *Certification fee.* Certified companies which perform tank-handling activities on a UST as described in this subsection, may be required to pay to the Fund an annual certification fee for each of the certifications held for each of the certified installers, based on the certification information maintained by the DEP:

(1) Installation and modification certification (UMX) fee not to exceed a maximum fee of \$100.

(2) Removal certification (UMR) fee not to exceed a maximum fee of \$50.

(3) Tightness Tester certification (UTT) fee not to exceed a maximum fee of \$25.

(4) Storage tank liner certification fee (TL) not to exceed a maximum fee of \$100.

(d) *Activity fee.* A per tank activity fee may be assessed on all activities on a UST or a HOT. The tank installer must complete an activity fee form for each activity. These forms and the activity fees shall be submitted to the Fund 30 days prior to the commencement of the activity. The fees are as follows:

(1) Installation Activity Fee not to exceed a maximum fee of \$100.

(2) Major Modification Activity Fee not to exceed a maximum fee of \$100.

(3) Removal Activity Fee not to exceed a maximum fee of \$100.

§ 977.20. Certified company fee, certification fee and activity fee payment procedures.

(a) *Certified company fee and certification fee payment procedures.*

(1) This section applies to a certified company that performs installations, major modifications, or removals of a UST or a HOT.

(2) A certified company shall pay the certified company fee and the certification fee to the Fund on or before the due date on the statement.

(3) The assessed fees shall be calculated as set forth in § 977.19 (relating to certified company fees).

(4) A certified company shall pay, by the due date indicated on the statement, the full amount of the fee or a monthly payment of 1/12 of the total certified company fee and certification fee.

(b) *Activity fee payment procedures.*

(1) This section applies to a certified company that performs installations, major modifications, and removals of a UST or a HOT.

(2) The certified company shall submit any required installation, modification and removal fees on a form provided by the Fund for each facility where the certified company is performing an activity.

(3) The certified company shall submit the form and activity fee at least 30 days prior to the inception of the tank-handling activity.

(4) The activity fee shall be calculated as set forth in § 977.19(d) (relating to certified company fees).

§ 977.21. Penalty for late payment of fees.

Failure or refusal of a participant to pay the fee or a part of the fee by the date established by the Board for the payment of fees may result in a penalty of 5% of the amount due which shall accrue on the first day of delinquency. Thereafter, on the last day of each month

during which a part of a fee or a prior accrued penalty remains unpaid, an additional 5% of the then unpaid balance shall accrue in accordance with section 705(e) of the act (35 P. S. § 6021.705(e)).

§ 977.22. Fee dispute procedure.

(a) *General disputes.* The participant or a distributor that disputes the amount of an assessed fee may obtain review by filing a complaint with the Fund's Executive Director following the procedure established in § 977.61 (relating to dispute procedures).

(b) *Change in tank ownership.* If a change in the ownership of a UST occurs and the prior owner failed to pay assessed fees, the current owner may file an affidavit supplied by the Fund to establish date of ownership. The Fund may waive unpaid assessed fees up to and including the date of purchase of a UST. Coverage for releases occurring on or after the date of ownership may be considered for Fund coverage, based on the eligibility requirements as found in § 977.31 (relating to eligibility requirements).

§ 977.23. Recordkeeping responsibilities.

(a) An owner or operator shall maintain for 3 years documents necessary to verify the payment of the gallon, capacity, and tank fees. At a minimum, these records shall include:

- (1) Distributor delivery invoices.
- (2) Financial records documenting payment of fees.
- (3) Regulated substance inventory documents.
- (4) Copies of the statement for a gallon, capacity, or tank fee.

(b) A distributor shall maintain for a minimum of 3 years documents necessary to verify the number of gallons of regulated substances delivered into a UST. Records shall be maintained by customer account and shall include at a minimum:

- (1) Distributor delivery invoices.
- (2) Financial records, by customer account, documenting payment of the gallon fee.
- (3) Financial records pertaining to remittance of the gallon fee by distributor.
- (4) Regulated substance inventory records.
- (5) Copies of the Fund's gallon fee statement.

(c) A certified company shall maintain for 3 years documents necessary to verify the company certification and the number of installer certifications held by the employees of the company for the installation, major modification, and removal of a UST or a HOT. This documentation shall include, at a minimum:

- (1) Copies of DEP company certification and tank installer certificates.
- (2) Financial records documenting payment of fees to the Fund.

(d) A certified company shall maintain documents necessary to verify the number of installations, modifications, and removal activities performed on a UST or a HOT. This documentation shall include, at a minimum:

- (1) Copies of the tank activity report form originally submitted to DEP.
- (2) Financial records documenting payment of fees to the Fund.

(e) Documents identified in this section shall be made available to the Fund upon request.

§ 977.24. Audit of records.

The Fund may require audits of the participant or a distributor to protect the rights and responsibilities of the Fund.

Subchapter C. COVERAGE AND CLAIMS PROCEDURES

Sec.	
977.31.	Eligibility requirements.
977.32.	Participant cooperation.
977.33.	Fund coverage and exclusions.
977.34.	Claims reporting.
977.35.	Third-party suit.
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977.38.	Primary coverage.
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977.40.	Subrogation for corrective action cost.

§ 977.31. Eligibility requirements.

(a) To be eligible for Fund coverage, the participant shall meet the following eligibility requirements as set forth in section 706 of the act (35 P. S. §§ 6021.706):

- (1) The participant is potentially liable for the corrective action costs, bodily injury or property damage.
- (2) The current fee required under section 705 of the act (35 P. S. § 6021.705) has been paid.
- (3) A UST or HOT has been registered in accordance with the requirements of section 503 of the act (35 P. S. § 6021.503).
- (4) The participant has obtained the appropriate permit or certification, if required under sections 108, 501 and 504 of the act (35 P. S. §§ 6021.108, 6021.501 and 6021.504).
- (5) The release that is the subject of the claim occurred after the date established by the Board for payment of the fee required by section 705(d) of the act (35 P. S. § 6021.705(d)). This date is established as February 1, 1994.

(6) The participant cooperates, as defined in § 977.32 (relating to participant cooperation), with the Fund in its eligibility determination process, claims investigation, the defense of any suit, the pursuit of a subrogation action and other matters as requested.

(7) The participant has met the notification requirements of § 977.34 (relating to claims reporting).

(8) If the claimant is a certified company, the company conducted a tank-handling activity on a UST or a HOT from which the release occurred.

§ 977.32. Participant cooperation.

(a) At a minimum, the participant shall cooperate by:

(1) Providing all information requested by the Fund including tank system design documents, inventory records, tank tightness test results, contracts, and other information pertinent to a claim within 30 days of the request of the Fund, or additional time as set by the Fund.

(2) Permitting the Fund or its agent to inspect, sample, and monitor on a continuing basis the property or operation of the participant.

(3) Providing access to interview employees, agents, representatives, or independent contractors of the participant; and to review any documents within the possession, custody or control of the participant concerning the claim.

(4) Submitting, and requiring employees, consultants, and other interested parties subject to its control to submit, to an examination under oath upon the request of the Fund.

(5) Obtaining competitive proposals for work to be performed when requested by the Fund.

(b) The participant shall cooperate in all respects with the Fund, its investigators, attorneys, and agents during the investigation and resolution of a claim, including the defense of a suit, as provided in § 977.35 (relating to third-party suit) and any subrogation action as provided in § 977.40 (relating to subrogation for corrective action cost).

(c) Lack of cooperation by the participant with the Fund or its investigators, attorneys, or agents may result in denial of the claim or cessation of further payments on a claim.

§ 977.33. Fund coverage and exclusions.

(a) Fund coverage.

(1) *Corrective action.* The Fund shall indemnify an eligible owner or operator for up to the available coverage limit, for reasonable and necessary corrective action costs.

(2) *Bodily injury or property damage.* The Fund shall indemnify the eligible participant, up to the available coverage limit, for bodily injury and property damage.

(i) The Fund may defend any suit against the eligible participant. The cost of this defense does not reduce Fund coverage limits.

(ii) Punitive or exemplary damages awarded against the participant as a result of a suit are excluded from Fund coverage.

(3) *Deductible.* Payment of a claim for corrective action costs shall be subject to a deductible in an amount not less than \$5,000 per tank per occurrence for each UST or HOT that contributed to the release. If an eligible claim for bodily injury or property damage results from the release, an additional deductible per tank per occurrence in an amount not less than \$5,000 applies to all claims in addition to the deductible for corrective action. A certified tank installer is subject to one deductible per tank per occurrence. The Fund in its discretion may pay the entire claim and seek reimbursement of the applicable deductible from the participant. The Fund shall publish the deductibles in the *Pennsylvania Bulletin* annually.

(4) *Limits of liability.* Payment of corrective action costs and bodily injury and property damage claims are subject to the following limits of liability:

(i) Payments for reasonable and necessary corrective action costs, and bodily injury or property damage may not exceed a total of \$1 million per tank per occurrence and may not exceed the annual aggregate limit.

(ii) Payments may not exceed:

(A) An annual aggregate of \$ million for each owner and operator of 100 or less UST or an owner or operator of 100 or less HOT.

(B) An annual aggregate of \$2 million for each owner or operator of 101 or more UST or an owner or operator of 101 or more HOT.

(iii) For the purpose of determining coverage limits, any release, whether sudden, accidental, intermittent or continuous will be considered one occurrence.

(iv) The Fund will only reimburse an owner or operator for reasonable and necessary corrective action costs.

(v) Damages paid to a third party for bodily injury or property damage may not exceed the amount of damages awarded by a court of competent jurisdiction or the amount agreed to by the Fund in settlement of the claim or suit resulting from a release. Under no circumstances will the Fund pay any amount in excess of the Fund's limit of liability as found in paragraph (4).

(b) *Exclusions.* Fund coverage does not apply to the following:

(1) Any release caused in whole or in part by the intentional act of the participant.

(2) Any damages which the participant is legally obligated to pay solely by reason of the assumption of liability in a contract or agreement unless the participant has paid all current and past-due fees to the Fund as required by section 705(e) of the act (35 P. S. § 6021.705(e)), and the release was not discovered or known by the participant or by any previous participant, prior to the payment of any past due fees.

(3) Any portion of a release which occurred before February 1, 1994.

(4) Any claim made against a certified company before the date of election of coverage.

(5) Any claim made against the participant for a release discovered before any required fees are paid.

(6) Default judgments.

§ 977.34. Claims reporting.

The participant shall notify the Fund within 60 days after the confirmation of a release under §§ 245.304 and 245.305 (relating to investigation of suspected releases; and reporting releases).

§ 977.35. Third-party suit.

(a) *Suit.* In addition to the requirements of § 977.32 (relating to participant cooperation), the participant shall assist the Fund in its defense of a suit. The participant shall forward to the Fund all materials including:

(1) Technical reports, laboratory data, field notes, or any other documents gathered by or on behalf of the participant to abate a release or to implement corrective action.

(2) Documentation of release detection methods, such as tank and line tightness tests or inventory records to verify that a release has taken place.

(3) Correspondence between the participant and any other persons relating to the release or claim that is the subject of the suit

(4) Demands, summons, notices, or other processes or papers filed with, in or by a court of law, administrative agency, or an investigative body relating to the release or claim.

(5) The expert reports, investigations and data collected by experts retained by the participant relating to the release or claim.

(6) Other information developed or discovered by the participant concerning the release or claim.

(b) *Legal defense undertaken by the Fund.* The Fund may settle or defend any claim for bodily injury or property damage. The Fund may assign legal counsel to defend any suit brought against the participant by a third party. The Fund will not reimburse legal fees for any firm not assigned by the Fund.

(c) *Defense and exhaustion of limits.* The Fund is not required to pay defense costs after the limit of liability is exhausted.

§ 977.36. Corrective action payments.

(a) The Fund shall make payments for reasonable and necessary corrective action costs to an owner or operator, unless a signed Authorization to Pay Form provided by the Fund has been submitted designating another person to receive Fund payments.

(b) Time and expense charges for remediation invoices shall be submitted to the Fund for all work performed. For invoices to be paid by the Fund, the invoices must be fully documented to include:

- (1) Time sheets for personnel and equipment.
- (2) Statements of work performed.
- (3) Receipts or other documentation for expendable supplies and subcontractor supplies.
- (4) A list of tests performed with costs and results for any laboratory analyses.
- (5) The owner, operator or remediation contractor shall supply rate schedules, fees for service schedules, and contracts with consultants.

(6) All subcontractor invoices.

(c) An owner or operator may request that the Fund employ an alternative remediation payment option to include pay for performance type contracts.

§ 977.37. Priority of payment.

The Fund may prioritize reimbursements. The prioritization may take into account corrective action costs and the impact of the release on human health.

§ 977.38. Primary coverage.

(a) *Primary coverage.* The Fund provides primary coverage for corrective action costs and eligible claims for personal injury and property damage due to a release from a UST or a HOT.

(b) *Combined limits.* When the Fund determines a certified company is responsible for the release that is the subject of the claim, the coverage of a certified company will be exhausted before the coverage of an owner or operator of a UST or a HOT is applied.

§ 977.39. Claim dispute procedures.

The participant, or a distributor, that disputes a determination of the Fund may obtain a review of the determination by filing an appeal with the Executive Director of the Fund by following the procedures established in § 977.61 (relating to dispute procedures).

§ 977.40. Subrogation for corrective action cost.

(a) The Fund, after any payment, shall be subrogated to all of the rights of recovery of an owner or operator against any person for the costs of remediation.

(b) If an owner or operator does not comply with the requirements of § 977.32 (relating to participant cooperation), the Fund may deny any further payments on a claim.

Subchapter D. HEATING OIL TANK OPTIONAL PROGRAM

Sec.	
977.51.	Election requirements.
977.52.	Coverage period.
977.53.	Cancellation of coverage.
977.54.	Dispute procedures.

§ 977.51. Election requirements.

To elect coverage from the Fund, a HOT owner or operator shall:

(1) Complete and submit an application form available from the Fund.

(2) Provide the Fund with a copy of a tank tightness test utilizing an EPA approved testing system, indicating a satisfactory result. The test must have been completed within the 30-day period preceding the application date.

(3) Submit a fee determined by the Fund not to exceed a maximum of \$100. The fee will be credited to the applicant's account if the application is approved or returned if the application is rejected.

(4) Pay any fee established in § 977.11 (relating to Fund fees).

§ 977.52. Coverage period.

If the Fund determines that the requirements set forth in § 977.31 (relating to eligibility requirements) have been satisfied, coverage by the Fund will be effective from the date the application is received. A HOT owner or operator will have continuous coverage provided all fees are paid within 30 days of the due date indicated on the statement provided by the Fund.

§ 977.53. Cancellation of coverage.

(a) A HOT owner or operator may cancel coverage by providing advance written notice to the Fund. Coverage will be terminated on the date notice is received by the Fund or on a later date as requested by the HOT owner or operator. Fee refunds shall be made on a pro-rata basis.

(b) The failure of a HOT owner or operator to remit fees within 30 days of the due date indicated on the statement will cause coverage to be canceled as of the due date. A fee is deemed paid on the date the payment is received by the Fund. Coverage may be reinstated as provided in section 705(e) of the act (35 P. S. § 6021.705(e)).

§ 977.54. Dispute procedures.

A HOT owner or operator who disputes a decision of the Fund may obtain review by filing a complaint with the Fund's Executive Director following the procedures set forth in § 977.61 (relating to dispute procedures).

Subchapter E. DISPUTE PROCEDURES

Sec.	
977.61.	Dispute procedures.

§ 977.61. Dispute procedures.

(a) An appeal of a decision of the Fund shall be made in writing to the Executive Director of the Fund. The appeal must be received within 35 days of the mailing date of the Fund's decision. An appeal shall contain:

- (1) The name and address of the appellant.
- (2) A statement of the facts forming the basis of the complaint.
- (3) Supporting material.

(b) An appeal of the Executive Director's decision shall be made in writing to the Board. The appeal must be received by the Board within 15 days of the mailing date of the decision. The appeal process shall be conducted in accordance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

(c) An adjudication of the Board may be appealed in accordance with 2 Pa.C.S. § 702 (relating to appeals).

(d) To remain eligible for Fund coverage, disputed fees shall be paid in full during the pendency of an appeal.

(1) If a participant or a distributor prevails in the appeal, fees paid in excess of the amount determined to be due plus interest shall be refunded. Interest shall be computed at the rate determined by the Secretary of Revenue for interest payments for overdue taxes under section 806 of the Fiscal Code (72 P. S. § 806).

(2) Penalties authorized by the act or by § 977.21 (relating to penalty for late payment of fees) will be retroactive to the first day of delinquency.

[Pa.B. Doc. No. 00-2213. Filed for public inspection December 22, 2000, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Office of Administration

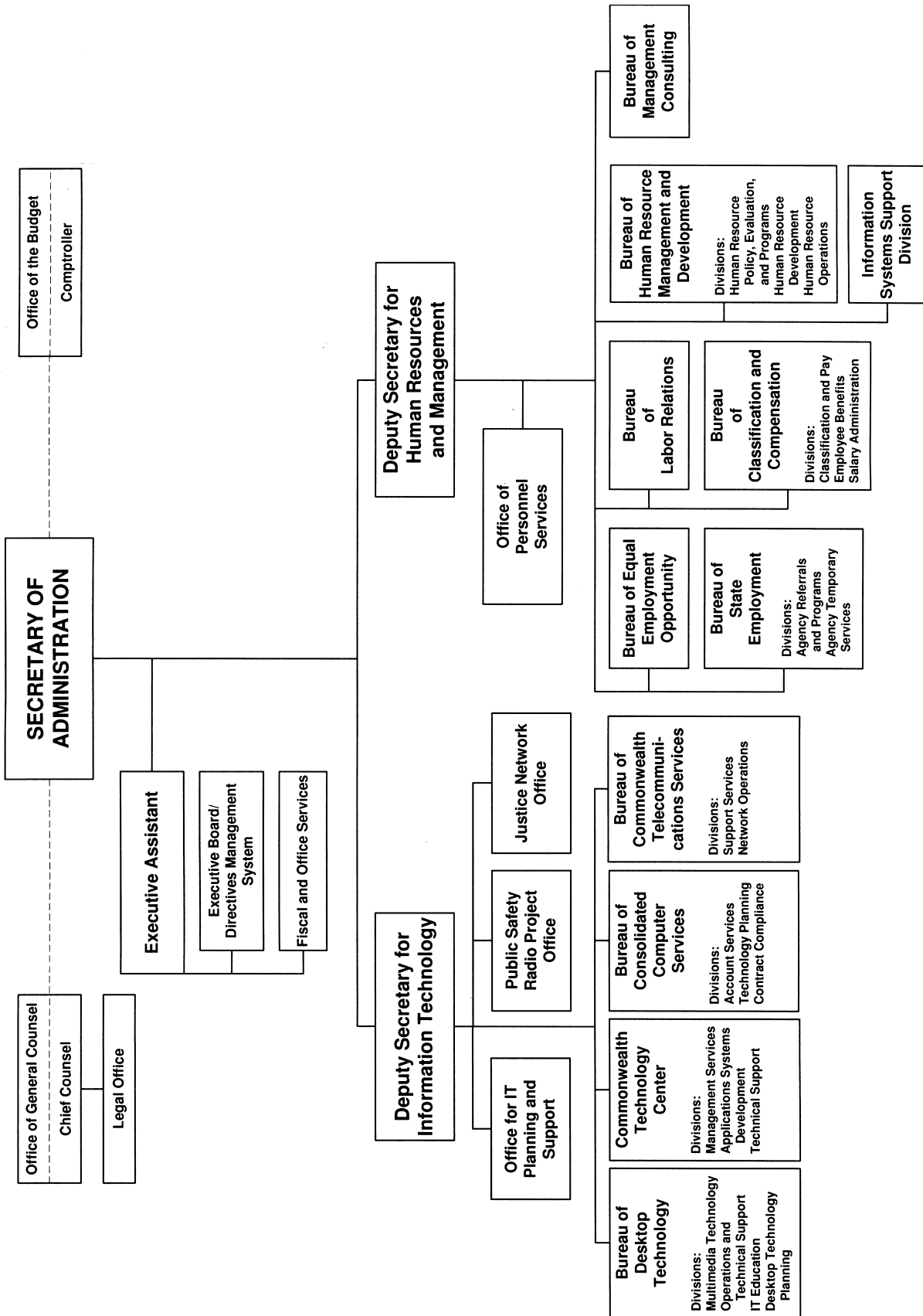
The Executive Board approved a reorganization of the Office of Administration effective December 8, 2000.

The organization chart at 30 Pa.B. 6607 (December 23, 2000) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Bulletin.)

[Pa.B. Doc. No. 00-2214. Filed for public inspection December 22, 2000, 9:00 a.m.]

OFFICE OF ADMINISTRATION



NOTICES

DEPARTMENT OF AGRICULTURE

Order of Quarantine; Plum Pox Virus

Whereas, the Plant Pest Act (3 P. S. §§ 258.1—258.27) empowers the Pennsylvania Department of Agriculture (Department) to take various measures to detect, contain and eradicate plant pests in this Commonwealth; and

Whereas, the powers granted the Department under the Plant Pest Act include (at 3 P. S. § 258.21) the power to establish quarantines to prevent the dissemination of plant pests within this Commonwealth; and

Whereas, Plum Pox Virus—a serious non-native plant pest that injures and damages stone fruits such as peaches, nectarines, plums, and apricots by drastically reducing the fruit yields from these stone fruit trees and by disfiguring the fruit to the point it is unmarketable—has been detected in certain areas of this Commonwealth; and

Whereas, the Department has exercised its authority under the Plant Pest Act and issued several Orders of Quarantine—affecting portions of Adams, Cumberland and York Counties—in an effort to contain, identify and eradicate the Plum Pox Virus; and

Whereas, the Department has determined it necessary to temporarily prohibit the planting of stone fruit trees in these quarantined areas; and

Whereas, the Department considers this prohibition necessary in order to prevent or reduce the spread of PPV in this Commonwealth.

Now, therefore, under authority of Section 21 of the Plant Pest Act (3 P. S. § 258.21), the Pennsylvania Department of Agriculture hereby issues the following order:

This Department hereby prohibits the planting of stone fruit trees (apricot, nectarine, peach and plum) in the areas currently under PPV-related quarantine. This temporary prohibition applies to both fruit-bearing and ornamental varieties of stone fruit trees. Examples of common varieties of ornamental stone fruit trees include purple-leaf plum, flowering almond, flowering peach and purple-leaf sandcherry. The areas currently under PPV-related quarantine, and references to prior editions of the *Pennsylvania Bulletin* containing these Quarantine Orders, are as follows:

Adams County

Latimore Township (29 Pa.B. 5735, November 6, 1999)

Huntington Township (29 Pa.B. 5735, November 6, 1999)

Borough of York Springs (30 Pa.B. 5852, November 11, 2000)

That portion of Tyrone Township located north of State Highway 234 (30 Pa.B. 4357, August 19, 2000)

That part of Menallen Township located to the east of the rough north-to-south line extending from the northern border of the township, south on State Route 4007 (Pine Grove Furnace Road) to State Route 4008, to State Highway 34 (at Bendersville), and south on State Highway 34 to the southern border of that township (30 Pa.B. 4357, August 19, 2000)

Cumberland County

Dickinson Township (30 Pa.B. 4357, August 19, 2000)

South Middleton Township (30 Pa.B. 3269, July 1, 2000)

Borough of Mount Holly Springs (30 Pa.B. 5852, November 11, 2000)

This Order applies to commercial orchards, commercial nurseries, homeowners and all persons within the quarantine areas described above.

This Order is effective as of December 13, 2000, and shall remain in effect until terminated by subsequent order.

SAMUEL E. HAYES, Jr.

Secretary

[Pa.B. Doc. No. 00-2215. Filed for public inspection December 22, 2000, 9:00 a.m.]

Plum Pox Virus Commercial Orchard Fruit Tree Indemnity Program

The Department of Agriculture (Department) established the procedures and requirements pursuant to which it awards grants under the Plum Pox Virus Commercial Orchard Fruit Tree Indemnity Program (Program) by publication of a notice at 30 Pa.B. 4014 (August 5, 2000). In summary, the Program provides commercial stone fruit producers reimbursement for 15% of the losses they will sustain as a result of the destruction of peach trees, nectarine trees and other stone fruit trees as part of the Department's Plum Pox Virus (PPV) eradication effort. The Program complements a current initiative of the United States Department of Agriculture (USDA) to reimburse commercial stone fruit producers for 85% of these losses. Both the Program and its Federal counterpart use the same formula for calculating losses.

The following clarifications are made with respect to the referenced procedures and requirements:

1. *Age of Trees.* The referenced notice establishing the procedures and requirements for the Program contained a table that assigned a particular net present value (Net Present Value Table) to stone fruit trees based upon the age of the trees involved. Since stone fruit trees might grow for several years at a nursery before being planted in a commercial orchard, though, the "age" of a stone fruit tree shall be determined from the date it is planted at a commercial orchard. By way of example: If 2-year old stone fruit nursery stock is planted in a commercial orchard on May 1, 2000, it will not be considered to be 1 year of age until May 1 of 2001.

In addition, for purposes of calculating reimbursement under the Net Present Value Table the age of a stone fruit tree will increase by 1 year after each harvest of stone fruit from the tree. By way of example: Once fruit has been harvested from a 6-year old block of stone fruit trees, that block will be considered 7 years old for purposes of reimbursement under the Net Present Value Table.

2. *Net Present Value of Trees that are Less Than 1 Year of Age.* The referenced Net Present Value Table did not assign a net present value to stone fruit trees that are

less than 1 year of age. The net present value of stone fruit trees that are planted in a commercial orchard and are less than 1 year of age shall be \$2,827 per acre. This figure is consistent with the USDA's loss reimbursement formula.

3. *Reimbursement for Inputs.* Commercial orchard owners invest in pesticides, herbicides, labor and other "inputs" in preparing a stone fruit orchard to produce a crop. The notice establishing the procedures and requirements for the Program did not make provision for reimbursement of these inputs when—through Order of the Department—a stone fruit crop cannot be harvested. The Department will reimburse the owner of a commercial orchard for these lost inputs with respect to stone fruit trees that are 4 years of age or older. Stone fruit trees are generally considered to be pre-productive or non-bearing until they are 4 years of age or older. For example, trees planted in 1996 or earlier would be considered 4 years of age or older. The reimbursement for these lost inputs shall be as follows:

(a) If the Department issues an Order on or before July 1, requiring the removal and destruction of stone fruit trees that are 4 years of age or older, reimbursement for lost inputs shall be \$699-per-acre.

(b) If the Department issues an Order after July 1, requiring the removal and destruction of stone fruit trees that are 4 years of age or older, reimbursement for lost inputs shall be \$854-per-acre.

Once fruit is harvested from a block of stone fruit trees, that block is ineligible for reimbursement of input costs. This reimbursement for lost inputs shall be in addition to payments made in accordance with the Net Present Value Table. Reimbursement of input costs shall be effective for Treatment Orders issued after June 1, 2000.

Additional Information

Further information may be obtained by contacting the Pennsylvania Department of Agriculture, Attn: Lyle B. Forer, Director, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-5203.

SAMUEL E. HAYES, Jr.,
Secretary

[Pa.B. Doc. No. 00-2216. Filed for public inspection December 22, 2000, 9:00 a.m.]

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending December 12, 2000.

BANKING INSTITUTIONS

Consolidations, Mergers & Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
12-9-00	Farmers First Bank Lititz Lancaster County Purchase of assets/assumption of liabilities of one branch office of Main Street Bank, Reading, located at: 1950 Old Philadelphia Pike Greenfield East Lampeter Township Lancaster County	Lititz	Effective

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
12-7-00	Brentwood Bank Bethel Park Allegheny County	6257 Library Road Bethel Park Allegheny County	Filed
12-12-00	FirstService Bank Lansdale Montgomery County	301 Oxford Valley Rd. Yardley Bucks County	Authorization Surrendered

Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
12-12-00	Northwest Savings Bank Warren Warren County	To: 2218-2220 South Queen Street York York County	Approved

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
		<i>From:</i> Queensgate Shopping Center 2081 Springwood Road York York County	

Branch Discontinuances

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
12-8-00	Main Street Bank Reading	1950 Old Philadelphia Pike Greenfield East Lampeter Township Lancaster County	Effective

SAVINGS INSTITUTIONS

None

CREDIT UNIONS**Consolidations, Mergers and Absorptions**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
12-6-00	Belco Community Credit Union, Harrisburg, and Quaker Oats Shiremanstown Federal Credit Union, Shiremanstown Surviving Institution— Belco Community Credit Union, Harrisburg	Harrisburg	Effective

JAMES B. KAUFFMAN, Jr.,
Acting Secretary

[Pa.B. Doc. No. 00-2217. Filed for public inspection December 22, 2000, 9:00 a.m.]

Election by Fidelity Savings Bank to Exercise Conditional Powers

Effective on the date of this publication in the *Pennsylvania Bulletin*, under an election by Fidelity Savings Bank, authorized by section 513(b) of the Banking Code of 1965 (7 P.S. § 513(b)), Fidelity Savings Bank, is hereby granted the following conditional powers as described by sections 504(b)(xiii) and 506(a)(iv)(B) and (vi) of the Banking Code of 1965 (7 P.S. §§ 504(b)(xiii) and 506(a)(iv)(B) and (vi)), to be exercised only with the prior written approval of the Department of Banking.

JAMES B. KAUFFMAN, Jr.,
Acting Secretary

[Pa.B. Doc. No. 00-2218. Filed for public inspection December 22, 2000, 9:00 a.m.]

Maximum Lawful Rate of Interest for Residential Mortgages for the Month of January 2001

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in section 301 of the act of January 30, 1974 (P.L. 13, No. 6) (41 P.S. § 301), hereby determines that the maximum lawful rate of interest for residential mortgages for the month of January 2001, is 8 1/4%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221). Further preemption was instituted with the signing of Pub. L. 96-399, which overrode State interest rate limitations on any individual who finances the sale or exchange of residential real property which such individual owns and which such individual occupies or has occupied as his principal residence.

Each month the Department of Banking is required by State law to compute and announce the ceiling rate on residential mortgages in Pennsylvania. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 5.83 to which was added 2.50 percentage points for a total of 8.33 that by law is rounded off to the nearest quarter at 8 1/4%.

JAMES B. KAUFFMAN, Jr.,
Acting Secretary

[Pa.B. Doc. No. 00-2219. Filed for public inspection December 22, 2000, 9:00 a.m.]

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

Emergency Shelter Grant Program

The Department of Community and Economic Development (DCED) has been invited to apply for funding through the United States Department of Housing and Urban Development.

The Emergency Shelter Grant Program is established within subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C.A. §§ 11371—11378). The program authorizes grants for the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, for the payment of certain operating expenses and essential services in connection with emergency shelters for the homeless, and for homeless prevention activities. The program is designed to be the first step in a continuum of assistance to enable homeless individuals and families to move toward independent living as well as to prevent homelessness.

One copy of the application may be submitted to the Department by local governments to the Customer Service Center, DCED, 4th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120 in accordance with DCED's Single Application requirements. A copy of the application must also be sent to the appropriate regional office. The application window will open on January 1, 2001 and close at 5 p.m. on February 28, 2001. Applications received after this date may not be considered for funding.

Applications forms and instructions may be obtained by contacting the Department's main office in Harrisburg (717) 720-7404 or the Department's Regional Offices. Persons with a disability who wish to submit an application in accordance with the provisions stated herein and who require assistance with that application and persons who require copies of this notice in an alternate format (large type, braille, and the like) should contact Edward Geiger, 4th Floor, Commonwealth Keystone Building, Harrisburg, Pennsylvania 17120, telephone (717) 787-5327 to discuss how the Department may best accommodate their needs. The following is the listing of DCED Regional Offices and the counties they serve:

Department of Community and Economic Development Regional Offices

Southeast

Bucks, Chester, Delaware, Montgomery and Philadelphia counties

PA Department of Community and Economic Development

908 State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130
(215) 560-2256

Northeast

Berks, Bradford, Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne and Wyoming counties

PA Department of Community and Economic Development

Suite 201 Samters Building
101 Penn Avenue
Scranton, PA 18503-2025
(570) 963-4571

Central

Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry and York, Bedford, Blair, Cambria, Centre, Clinton, Columbia, Fulton, Huntingdon, Juniata, Lycoming, Mifflin, Montour, Northumberland, Snyder, Somerset and Union counties.

PA. Department of Community and Economic Development

4th Floor, Commonwealth Keystone Building
Harrisburg, PA 17120
(717) 787-7347

Southwest

Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Washington and Westmoreland counties

PA Department of Community and Economic Development

1405 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
(412) 565-5002

Northwest

Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Potter, Venango and Warren counties

PA Department of Community and Economic Development

1200 Lovell Place Apartments
Erie, PA 16503
(814) 871-4241

Main Office

4th Floor, Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 720-7404

SAMUEL A. MCCULLOUGH,
Secretary

[Pa.B. Doc. No. 00-2220. Filed for public inspection December 22, 2000, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

APPLICATIONS RECEIVED UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

(Part I Permits)

The following parties have applied for an NPDES permit to discharge controlled wastewaters into the surface waters of this Commonwealth. Unless otherwise indicated on the basis of preliminary review and application of lawful standards and regulations the Department of Environmental Protection (Department) proposes to issue a permit to discharge subject to certain effluent limitations and special conditions. These proposed determinations are tentative.

Where indicated the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision to 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, proposed effluent limitations and special conditions, comments received and other information are on file and may be inspected and arrangements made for copying at the office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid service or other accommodations to participate in the proceeding should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications for National Pollutant Discharge Elimination System (NPDES) permit to discharge to State waters.

Southeast Regional Office: Regional Manager, Water Management, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.

PA 0053651. Industrial Waste, **Johnson Matthey**, 1401 King Street, West Chester, PA 19380.

This application is for renewal of an NPDES permit to discharge treated groundwater and stormwater from a groundwater remediation system in West Whiteland Township, **Chester County**. This is an existing discharge to an Unnamed Tributary to Valley Creek.

The receiving stream is classified for the cold water fish, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 36,000 gpd are as follows:

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
1,1,2 Trichloroethane	0.002	0.004	0.005
1,1,2,2, Tetrachloroethane	0.0007	0.0014	0.0017
Trichloroethylene	0.01	0.02	0.025
Tetrachloroethylene	0.0025	0.005	0.0062
pH	within limits of 6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 002 are as follows:

Parameter	Average Annual (mg/l)	Instantaneous Maximum (mg/l)
CBOD ₅	monitor/report	monitor/report
Chemical Oxygen Demand	monitor/report	monitor/report
Oil and Grease	monitor/report	monitor/report
pH	monitor/report	monitor/report
Total Suspended Solids	monitor/report	monitor/report
Total Kjeldahl Nitrogen	monitor/report	monitor/report

<i>Parameter</i>	<i>Average Annual (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Phosphorus	monitor/report	monitor/report
Iron (Dissolved)	monitor/report	monitor/report

The EPA waiver is in effect.

PA 0044776. Sewage, **Northwestern Chester County Municipal Authority**, Dampman Hill Road, P. O. Box 308, Honey Brook, PA 19344.

This application is for renewal of an NPDES permit to discharge treated sewage from Northwestern Chester County Municipal Authority in Honey Brook Township, **Chester County**. This is an existing discharge to West Branch Brandywine Creek.

The receiving stream is classified for high quality trout stocking, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 600,000 gpd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅			
(5-1 to 10-31)	15	22.5	30
(11-1 to 4-30)	25	37.5	50
Total Suspended Solids	30	45	60
Ammonia (as N)			
(5-1 to 10-31)	3.0		6.0
(11-1 to 4-30)	9.0		18.0
Phosphorus (as P)	2.0		4.0
Fecal Coliform	200 colonies/100 ml as a geometric average		
Dissolved Oxygen	minimum of 6.0 mg/l at all times		
pH	within limits of 6.0—9.0 standard units at all times		
Color, True			75 pt/Co
NH ₃ -N instream			0.5
Total Residual Chlorine	0.5		1.2

Other Conditions:

1. Chlorine Minimization
2. Proper Sludge Disposal

The EPA waiver is in effect.

Northeast Region: Environmental Protection Manager, Water Management Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2553.

PA 0061000. Sewerage, **Village of the Four Seasons, Inc.**, R. R. 3, Box 3350, Uniondale, PA 18470.

This proposed action is for the renewal of an NPDES permit to discharge treated sewage into East Branch of Tunkhannock Creek in Herrick Township, **Susquehanna County**.

The receiving stream is classified for the following uses: cold water fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 based on a design flow of 0.028 mgd are:

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
Total Suspended Solids	30	60
NH ₃		
(5-1 to 10-31)	3.0	6.0
(11-1 to 4-30)	9.0	18.0
Dissolved Oxygen	a minimum of 6.0 mg/l at all times	
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric mean	
(10-1 to 4-30)	2000/100 ml as a geometric mean	
Total Residual Chlorine	1.0	2.0
pH	6.0 to 9.0 standard units at all times	

The EPA waiver is in effect.

Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.

PA 0032557. SIC Code 4952, Sewage, **Board of Supervisors of the Township of Logan**, 800 39th Street, Altoona, PA 16602-1799.

This application is for issuance of an NPDES permit for an increased discharge of treated sewage to Little Juniata River in Watershed 11-A, in Antis Township, **Blair County**.

The receiving stream is classified for trout stocking fishes, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was United Water Company located in Dauphin County near Harrisburg. The discharge is not expected to impact any potable water supply.

The proposed interim effluent limits for Outfall 001 for a design flow of 0.60 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
5-day CBOD			
(5-1 to 10-31)	20	30	40
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N			
(5-1 to 10-31)	15	XXX	XXX
Total Phosphorus	monitor	XXX	XXX
Total Nitrogen	monitor	XXX	XXX
Total Cadmium	monitor	XXX	XXX
Total Lead	monitor	XXX	XXX
Total Residual Chlorine	1.0	XXX	2.0
Dissolved Oxygen		minimum of 5.0 at all times from 6.0 to 9.0 inclusive	
pH			
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		7,900/100 ml as a geometric average	

The proposed final effluent limits for Outfall 001 for a design flow of 0.70 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N			
(5-1 to 10-31)	10	XXX	20
(11-1 to 4-30)	21	XXX	42
Total Phosphorus	monitor	XXX	XXX
Total Nitrogen	7.0	XXX	14.0
Total Cadmium	monitor	XXX	XXX
Total Lead	monitor	XXX	XXX
Dissolved Oxygen		minimum of 5.0 at all times from 6.0 to 9.0 inclusive	
pH			
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		7,000/100 ml as a geometric average	

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

PA 0081221. SIC Code 6515, Sewage, **Campbell's Mobile Homes, Inc.** (Bailey Run Mobile Home Park), P. O. Box 129, Newport, PA 17074-0129.

This application is for renewal of an NPDES permit for an existing discharge of treated sewage to an unnamed tributary to Bailey Run in Watershed 12-B (Tuscarora—Buffalo Creeks), in Miller Township, **Perry County**.

The receiving stream is classified for warm water fishes, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was United Water Company located in Susquehanna Township, Dauphin County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.030 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
Suspended Solids	30	60
NH ₃ -N		
(5-1 to 10-31)	3	6
(11-1 to 4-30)	9	18
Dissolved Oxygen	minimum of 5.0 at all times	
pH	from 6.0 to 9.0 inclusive	

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)	200/100 ml as a geometric average 3,500/100 ml as a geometric average	

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

PA 0087319. SIC Code 5171, Industrial Waste, **Scranton-Altoona Terminals Corporation (Sinking Spring Bulk Storage Terminal)**, P. O. Box 2070, Sinking Springs, PA 19608.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to Cacoosing Creek in Watershed 3-C (Tulpehocken Creek), in Spring Township, **Berks County**.

The receiving stream is classified for trout stocking, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Pottstown Borough located on the Schuylkill River. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfalls 001, 002, 003 and 004 are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Recoverable Petroleum Hydrocarbons	XXX	monitor and report	XXX

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

PA 0084468. SIC Code 3479, Industrial Waste, **Durabond Coating Company, Inc.** (Durabond Coating Plant), P. O. Box 38, Highspire, PA 17034.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to Laurel Run in Watershed 7-C (Clark—Paxton Creeks), in Steelton Borough, **Dauphin County**.

The receiving stream is classified for warm water fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was Columbia Borough Water Company located in Columbia Borough, Lancaster County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 101 for a design flow of 0.0004 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	9.5	19	24
BOD ₅	13	26	32
Oil and Grease	14.5	29	30

Outfall 201 receives stormwater runoff from plant areas with industrial activities.

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

PA 0008303. SIC Code 3312, Industrial Waste, **Pennsylvania Steel Technologies, Inc. (Steelton Plant)**, 215 South Front Street, Steelton, PA 17113-2594.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to the Susquehanna River in Watershed 7-C (Clark—Paxton Creeks), in Steelton Borough, **Dauphin County**.

The receiving stream is classified for warm water fishery, recreation, water supply, and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was the Columbia Borough Water Company located in Columbia Borough, Lancaster County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 002 for a design flow of 27.6 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>
pH	from 6.0 to 9.0 inclusive	
Total Suspended Solids	30	60
Oil and Grease	10	15
Temperature		105°F

The proposed effluent limits for Outfall 102 (internal monitoring) are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>
pH	from 6.0 to 9.0 inclusive	
Total Suspended Solids	1,452 lb/day	3,883 lb/day
Oil and Grease	339 lb/day	897 lb/day

The proposed effluent limits for Outfall 112 (internal monitoring) are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>
pH	from 6.0 to 9.0 inclusive	
Total Suspended Solids	monitor and report	
Oil and Grease	monitor and report	
Total Zinc	0.31 lb/day	0.93 lb/day
Total Lead	0.12 lb/day	0.62 lb/day

The proposed effluent limits for Outfall 122 (internal monitoring) are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>
pH	from 6.0 to 9.0 inclusive	
Total Suspended Solids	monitor and report	
Total Zinc	0.34 lb/day	1.10 lb/day
Total Lead	0.22 lb/day	0.67 lb/day

Outfalls 001 through 008, 010 and 015 are identified as stormwater outfalls receiving runoff from areas with industrial activity. Monitoring is required for Chemical Oxygen Demand, Dissolved Iron, Oil and Grease, pH, and Total Suspended Solids for Outfalls 001 through 008 and 015.

Part C includes chemical additive usage conditions and requirements for stormwater outfalls.

Individuals may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is not in effect.

PA 0010782. SIC Codes 4911, 4953, and 4952, Industrial Waste, **Reliant Energy (Titus Power Plant)**, 1001 Broad Street, Box 1050, Johnstown, PA 15907.

This application is for renewal of an NPDES permit for existing discharge of treated industrial waste to the Schuylkill River in Watershed 3C, in Cumru Township, **Berks County**.

The receiving stream is classified for warm water fishes, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was the Pottstown Borough located on the Schuylkill River. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 1.469 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH	6.0 to 9.0 S. U. at all times		
Total Suspended Solids	30	100	100
Oil and Grease	15	20	20
Total Residual Chlorine	0.50		1.60

The proposed effluent limits for Outfall 002 for a design flow of 2.149 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH	6.0 to 9.0 S. U. at all times		
Total Suspended Solids	30	60	75
Oil and Grease	15	30	30
Total Residual Chlorine	monitor and report		
Total Chromium	0.20	0.20	0.50
Total Zinc	1.00	1.00	2.50
Total Copper	0.56	1.00	1.40
Total Iron	1.00	1.00	2.50
126 Priority Pollutants	nondetectable	nondetectable	

The proposed effluent limits for Outfall 004 for a design flow of 1.007 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH		6.0 to 9.0 S. U. at all times	
Total Suspended Solids	30	100	100
Total Dissolved Solids	2,500	5,000	6,250
Oil and Grease	15	20	20

The proposed effluent limits for Outfall 104 for a design flow of 0.147 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH		6.0 to 9.0 S. U. at all times	
Total Suspended Solids	30	100	100
Oil and Grease	15	20	20

Persons may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is not in effect.

Northcentral Region: Environmental Program Manager, Water Management Program, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (570) 327-3666.

PA 0112585. Sewerage, SIC: 4952, **John B. Watkins**, R. R. 1, Box 29, East Smithfield, PA 18817.

This proposed action is for renewal of an NPDES permit for discharge of treated sewage to Toad Hollow in Ulster Township, **Bradford County**.

The receiving stream is classified for the following uses: Warm water fishery and aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the downstream potable water supply (PWS) considered during the evaluation is the Danville Borough located 140 miles below the discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.003 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	10	20
Suspended Solids	10	20
NH ₃ -N		
(5-1 to 10-31)	3.0	6.0
(11-1 to 4-30)	9.0	18.0
Total Chlorine Residual	Monitor	
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
pH		6.0—9.0 at all times

The EPA waiver is in effect.

PA 0029068. Sewerage, SIC: 4952, **Valley Township Municipal Authority**, P. O. Box 307, Danville, PA 17821.

This proposed action is for renewal of an NPDES permit for an existing discharge of treated sewage wastewater to Mauses Creek in Valley Township, **Montour County**.

The receiving stream is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purposes of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing downstream potable water supply (PWS) considered during the evaluation is Merck and Company located at Riverside.

The proposed effluent limits for Outfall 001 based on a design flow of 0.21 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅			
(5-1 to 10-31)	16	24	32
(11-1 to 4-30)	25	40	50
TSS	30	45	60
Ammonia-N			
(5-1 to 10-31)	5	7.5	10
(11-1 to 4-30)	10	15	20
Total Cl ₂ Residual	1.0		2.3

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Fecal Coliforms (5-1 to 9-30)		200 col/100 ml as a geometric mean	
(10-1 to 4-30)		2,000 col/100 ml as a geometric mean	
pH		6.0 to 9.0 at all times	

The EPA waiver is in effect.

Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

PA 0002991. Industrial Waste, SIC: 3312, **Bethlehem Steel Corporation**, 1170 Eighth Avenue, Bethlehem, PA 18016-7699.

This application is for renewal of an NPDES permit to discharge treated cooling water, stormwater and groundwater from Johnstown Plant in City of Johnstown, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, Conemaugh River, Little Conemaugh River, Hinckstown Run, classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply (PWS) is Saltsburg Municipal M.W., located at 308 Point Street, Saltsburg, PA 15681, 49 miles below the discharge point.

Outfall 309: existing discharge, design flow of 0.85 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow (mgd)	monitor and report				
Temperature (°F)				110	
pH	not less than 6.0 nor greater than 9.0				

Outfalls 119, 305, 308, 310, 310A, 311A, 312A, 312B, 313, 313A, 313B, 314, 314A, 315, 401—405, 405A—E, G, and H, 406, 501—504A and B, 505—523, 801—805, 1000—1001: existing discharge, design flow varies.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
The discharge via these outfalls shall consist of uncontaminated stormwater/groundwater only.					

The EPA waiver is in effect.

PA 0095401. Sewage, **Saint Victor's Roman Catholic Church**, Box 149, Bairdford, PA 15006.

This application is for renewal of an NPDES permit to discharge treated sewage from Saint Victor's Roman Catholic Church STP in West Deer Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as an Unnamed Tributary of Dawson Run Tributary to Deer Creek, which are classified as a cold water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Oakmont Borough Municipal Authority at Allegheny River Mile 13.3.

Outfall 001: existing discharge, design flow of 0.001778 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25			50
Suspended Solids	30			60
Ammonia Nitrogen (5-1 to 10-31)	7.5			15.0
(11-1 to 4-30)	20.0			40.0
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	monitor and report			
Dissolved Oxygen	not less than 3 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA 0218693. Sewage, **Luzerne Township Sewage Authority**, 415 Hopewell Road, Brownsville, PA 15417-9542.

This application is for issuance of an NPDES permit to discharge treated sewage from Luzerne Township Sewage Authority Sewage Treatment Plant in Luzerne Township, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Monongahela River, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the PA-American Water Company—Brownsville.

Outfall 001: new discharge, design flow of 0.42 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25	37.5		50
Suspended Solids	30	45		60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	100,000/100 ml as a geometric mean			
Total Residual Chlorine	0.5			1.6
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

Northwest Regional Office: Regional Manager, Water Management, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.

PA 0221830. Sewage. **Borough of West Sunbury**, P. O. Box 202, West Sunbury, PA 16061.

This application is for a renewal of an NPDES Permit to discharge treated sewage to the UNT to South Branch Slippery Rock Creek in Clay Township, **Butler County**. This is an existing discharge.

The receiving water is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Camp Allegheny intake on Slippery Rock Creek located at Clay Township, Butler County, approximately 36 miles below point of discharge.

The proposed effluent limits for Outfall No. 001 based on a design flow of 0.028 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Weekly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40	50
TSS	30	45	60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	5,600/100 ml as a geometric average		
Total Residual Chlorine	0.5		1.2
pH	6.0—9.0 at all times		

The EPA waiver is in effect.

PA 0041246. Sewage, **Fort LeBoeuf School District**, Mill Village Elementary School, 34 East Ninth Street, P. O. Box 810, Waterford, PA 16441.

This application is for renewal of an NPDES permit to discharge treated sanitary sewage from Mill Village Elementary School to an unnamed tributary to French Creek in Mill Village Borough, **Erie County**. This is an existing discharge.

The receiving water is classified for warm water fishery, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply (PWS) considered during the evaluation is Cambridge Springs Borough, located 15 miles downstream of the discharge.

The proposed effluent limits for Outfall 001 based on average design flow of 0.0078 mgd, are:

<i>Parameter</i>	<i>Effluent Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25	50
Total Suspended Solids	30	60
NH ₃ -N (5-1 to 10-31)	3.0	6.0
(11-1 to 4-30)	9.0	18.0
Dissolved Oxygen	minimum of 3.0 mg/l at all times	

<i>Parameter</i>	<i>Effluent Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
Total Residual Chlorine (interim) (final)	0.67	1.57
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)	200/100 ml as a geometric average 5,200/100 ml as a geometric average	
pH	6.0 to 9.0 standard units at all times	

The EPA waiver is in effect.

PA 0103861. Sewage. **Zoccoli's Mobile Home Park**, R. D. 1, Edinburg, PA 16116.

This application is for renewal of an NPDES Permit, to discharge treated sewage to unnamed tributary to the Shenango River in Mahoning Township, **Lawrence County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Western Pennsylvania Water Company—New Castle District on the Shenango River located in New Castle, approximately 5 miles below point of discharge.

The proposed discharge limits for Outfall No. 001 based on a design flow of 0.0035 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
TSS	30	60
Ammonia-Nitrogen (5-1 to 10-31)	9.5	19
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)	200/100 ml as a geometric average 2,000/100 ml as a geometric average	
Total Residual Chlorine	0.5	1.2
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

PA 0029467. Sewage. **North Warren Municipal Authority**, 4 Hospital Drive, North Warren, PA 16365.

This application is for renewal of an NPDES Permit to discharge treated sewage to the Conewango Creek in Conewango Township, **Warren County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Emlenton Municipal Water supply on the Allegheny River located at Emlenton, approximately 98 miles below point of discharge.

The proposed effluent limits for Outfall No. 001 based on a design flow of 0.75 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Weekly Average (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40	50
TSS	30	45	60
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)	200/100 ml as a geometric average 62,000/100 ml as a geometric average		
Total Residual Chlorine	0.5		1.6
pH	6.0—9.0 at all times		

The EPA waiver is in effect.

PA 0038369. Industrial Waste, SIC: 4941. **Sharpsville Borough Water Treatment Plant**, Mercer Avenue, Sharpsville, PA 16150.

This application is for renewal of an NPDES Permit, to discharge treated industrial waste to Shenango River in Sharpsville Borough, **Mercer County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is Pennsylvania Water Company—Shenango Valley Division on the Shenango River located at River Mile 30.0, approximately 2.0 miles below point of discharge.

The proposed discharge limits for Outfall No. 001 based on a design flow of 0.034 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	monitor and report		
Total Suspended Solids	30.0	60.0	75.0
Total Aluminum	0.58	1.2	1.5
Total Iron	2.0	4.0	5.0
Total Manganese	1.0	2.0	2.5
Total Residual Chlorine	0.5		1.2
pH		6.0 to 9.0 at all times	

The EPA waiver is in effect.

PA 0004251, Amendment No. 2. Industrial Waste, SIC: 3321. **Advanced Cast Products**, 18700 Mill Street, Meadville, PA 16335.

This application is for amendment of an NPDES Permit, to discharge noncontact cooling water and stormwater to Van Horne Creek and French Creek in Vernon Township, **Crawford County**. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the City of Franklin on French Creek located at Franklin, approximately 28.2 miles below point of discharge.

The proposed discharge limits for Outfall No. 002 based on a design flow of 0.175 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	monitor and report		
Oil and Grease	15		30
pH		6.0 to 9.0 at all times	

The proposed discharge limits for Outfall No. 003 based on a design flow of 0.175 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	monitor and report		
Oil and Grease	15		30
pH		6.0 to 9.0 at all times	

The EPA waiver is in effect.

PA 0031640. Sewage, **General McLane School District**, 11771 Edinboro Road, Edinboro, PA 16412.

This application is for renewal of an existing NPDES permit to discharge treated sanitary sewage from a middle school and a high school to an unnamed tributary to Conneauttee Creek in Washington Township, **Erie County**. This is an existing discharge.

The receiving water is classified for warm water fishery, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the downstream potable water supply (PWS) considered during the evaluation is Franklin General Authority on French Creek, approximately 50 miles downstream.

The proposed effluent limits for Outfall 001 based on average design flow of 0.025 mgd are:

<i>Parameter</i>	<i>Effluent Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
CBOD ₅	25	50
Total Suspended Solids	30	60
NH ₃ -N		
(5-1 to 10-31)	2	4
(11-1 to 4-30)	6	12
Phosphorus as "P"	1.0	
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
Total Residual Chlorine	0.5	1.2
Fecal Coliform		
(5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
pH	6.0 to 9.0 standard units at all times	

The EPA waiver is in effect.

PA 0238422. Sewage. **Joseph P. Sitarik**, 21 Paddock Drive, New Hope, PA 18938.

This application is for a new NPDES Permit, to discharge treated sewage to Allegheny River in Watson Township, **Warren County**. This is a new discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Emlenton Water Company on the Allegheny River located at Emlenton, approximately 72 miles below point of discharge.

The proposed discharge limits for Outfall No. 001 based on a design flow of 0.0004 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	
CBOD ₅	10	20
TSS	20	40
Fecal Coliform (all year)	200/100 ml as a geometric average	
Total Residual Chlorine	XX	
pH	6.0 to 9.0 at all times	

XX—Monitor and report on Annual Maintenance Report.

The EPA waiver is in effect.

Proposed NPDES Permit Renewal Actions for Minor Sewage Discharges

The following parties have applied to renew their current NPDES permits to allow the continued discharge of controlled wastewaters into the surface waters of this Commonwealth. The Department of Environmental Protection (Department) has made a tentative determination to renew these permits and proposes to issue them, subject to their current permit effluent limitations, and monitoring and reporting requirements, with appropriate and necessary updated requirements to reflect new or changed regulations and other requirements. The updates may include, but will not be limited to, applicable permit conditions and/or requirements addressing combined sewer overflows (CSOs), municipal sewage sludge management and total residual chlorine control (TRC). Any major changes to or deviations from the terms of the existing permit will be documented and published with the final Department actions.

The EPA, Region III, Regional Administrator has waived the right to review or object to these proposed permit actions under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permits are invited to submit a statement to the Field Office indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding these applications and proposed permit actions. Comments should include the name, address and telephone number of the writer and a brief statement to inform the Field Office of the basis of the comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Managers will make a final determination regarding the proposed permit action. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit renewal application and related documents, proposed effluent limitations and special conditions, comments received and other information are on the Department's file. The documents may be inspected at, or a copy requested from, the Field Office that has been indicated above the application notice.

Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PA-0062031	Bruce Harding c/o Twin Cedars, Inc. 364 Little Walker Road Shohola, PA 18458-9373	Pike County Shohola Township	Unnamed Tributary to Little Walker Lake	None

Southeast Regional Office: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PA 0029980	Sleighton School 485 Valley Road Glen Mills, PA 19342	Delaware County Middletown Township	Rocky Run	
PA 0052451	The Wool House Francis L. Hamilton Oates P. O. Box 426 Landenberg, PA 19350-0426	Chester County New Garden Township	East Branch of White Clay Creek	

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PA 0053601	Richard and Brenda Steinmetz 5564 Tollgate Road Pipersville, PA 18947	Bucks County Plumstead Township	UNT to Geddes Run	

Southcentral Regional Office: Water Management Program, 909 Elmerton Avenue—2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PA 0081591	Eastern York County Sewer Authority P. O. Box 6206 44 Walnut Springs Road Hellam, PA 17406-6206	York County Hallam Borough	Kreutz Creek	TRC
PA 0081884	Cuttin' Co. LLC Biggerstaff Rest. P. O. Box 3038 Gettysburg, PA 17325	Adams County Straban Township	UNT Beaverdam Creek	TRC

DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

Applications under the Pennsylvania Clean Streams Law

(Part II Permits)

The following permit applications and requests for plan approval have been received by the Department of Environmental Protection (Department). Persons objecting on the grounds of public or private interest to the approval of an application or submitted plan may file a written protest with the Department at the address indicated above each permit application or plan. Each written protest should contain the following: name, address and telephone number; identification of the plan or application to which the protest is addressed and a concise statement in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based. The Department may conduct a fact-finding hearing or an informal conference in response to any given protests. Each writer will be notified in writing of the time and place if a hearing or conference concerning the plan, action or application to which the protest relates is held. To insure consideration by the Department prior to final action on permit applications and proposed plans, initial protests and additions or amendments to protests already filed should be filed within 15 calendar days from the date of this issue of the *Pennsylvania Bulletin*. A copy of each permit application and proposed plan is on file in the office indicated and is open to public inspection.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Industrial waste and sewerage applications under The Clean Streams Law 35 P. S. §§ 691.1—691.100.

Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.

WQM Permit No. 4600435. Sewerage. **Mark and Brenda Phelan**, 191 Hill Road, Green Lane, PA 18054.

Applicant is requesting approval for construction and operation of single residence STP located in Salford Township, **Montgomery County**.

WQM Permit No. 1500429. Sewerage. **West Brandywine Township Municipal Authority**, 199 Lafayette Road, Coatesville, PA 19320-1229. Applicant is requesting approval for the construction and operation of a pump station and force main to serve Ashberry Lane a.k.a. Hammell North a single residential Subdivision located in West Brandywine Township, **Chester County**.

Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

A. 5400406. Sewerage. **Schuylkill County Municipal Authority**, 221 South Centre Street, P. O. Box 960, Pottsville, PA 17901. Application for expansion of the Gordon Wastewater Treatment Facility, which will serve several facilities located in Gordon Borough and Foster Township, **Schuylkill County**. Application received in the Regional Office—November 6, 2000.

Northcentral Regional Office: Department of Environmental Protection, 208 West Third Street, Suite 101, Grit Building, Williamsport, PA 17701.

WQM No. 0800201. Industrial Waste. **Taylor Packing Company, Inc.**, P. O. Box 188, Wyalusing, PA 18853. Applicant submitted permit application for addition of clarifier and associated pumps, pumphouse and dechlorination system. Facility will be located at Wyalusing Township, **Bradford County**. Application was received November 17, 2000, at the Northcentral Regional Office of Department of Environmental Protection in Williamsport.

Southcentral Regional Office: Water Management Program Manager, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110-8200, (717) 705-4707. Persons who wish to review any of these applications should contact Mary DiSanto at (717) 705-4732.

A 0500410. Sewage submitted by **Nina Rightenour**, P. O. Box 23, New Baltimore, PA 15553 in Juniata Township, **Bedford County** to construct a small flow sewage treatment system to serve her single family residence was received in the Southcentral Regional Office on November 23, 2000.

A. 4400402. Sewage submitted by **Bratton Township Supervisors**, 460 Mountain Lane, McVeytown, PA 17051 in Bratton Township, **Mifflin County** to construct a wastewater treatment system was received in the Southcentral Region on November 29, 2000.

A. 4400403. Sewage submitted by **Bratton Township Supervisors**, 460 Mountain Lane, McVeytown, PA 17051 in Bratton Township, **Mifflin County** to construct a Pump Station/Force Main in McVeytown was received in the Southcentral Region on November 29, 2000.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

WQM Permit No. 1000408. Sewage, **Brenda Lee and Gregory J. Clifford**, 400 Glade Mill Rd., Valencia, PA 16059. This project is for the construction of a Single Residence Sewage Treatment Plant in Middlesex Township, **Butler County**.

WQM Permit No. 2700402. Sewage, **Carl R. Schwing**, 154 Star Route, Sheffield, PA 16347. This project is for the construction of a Single Residence Sewage Treatment Plant in Howe Township, **Forest County**.

INDIVIDUAL PERMITS (PAS)

NPDES INDIVIDUAL

The following parties have applied for an NPDES permit to discharge stormwater from a proposed construction activity into the surface waters of this Commonwealth. Unless otherwise indicated on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit and special conditions. The proposed determinations are tentative. Limitations are provided in the permit as erosion and sedimentation control measures and facilities which restrict the rate and quantity of sediment discharge.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the Regional Office or County Conservation District Office indicated as the responsible office, within 30 days from the date of this public notice. A copy of the written comments should be sent to the County Conservation District Office. Comments reviewed within this 30-day permit will be considered in the formulation of the final determination regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Regional Office of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the Regional Office considers the public response significant.

Following the 30-day comment period, the Water Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sedimentation control plan for the construc-

tion activity, are on file and may be inspected at the County Conservation District Office or the Department Regional Office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Lehigh County Conservation District, District Manager, Lehigh Ag. Ctr., Ste. 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.

NPDES Permit PAS10Q176-1. Stormwater. **Jaindl Land Company**, 3150 Coffeetown Rd., Orefield, PA 18069, has applied to discharge stormwater from a construction activity located in Lower Macungie Township, **Lehigh County**, to Little Lehigh Creek, HQ-CWF.

Lehigh County Conservation District, District Manager, Lehigh Ag. Ctr., Ste. 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.

NPDES Permit PAS10Q189. Stormwater. **Charles J. Danweber**, 3650 Schoeneck Road, Macungie, PA 18062, has applied to discharge stormwater from a construction activity located in Lower Macungie Township, **Lehigh County**, to Little Lehigh Creek, HQ-CWF.

Monroe County Conservation District, District Manager, 8050 Running Valley Road, Stroudsburg, PA 18360, (570) 629-3060.

NPDES Permit PAS10S092. Stormwater. **White Oak Country Estates, Inc.**, 4511 Falmer Avenue, Bethlehem, PA 18020-9796, has applied to discharge stormwater from a construction activity located in Hamilton Township, **Monroe County** to McMichaels Creek, HQ-CWF.

Northcentral Regional Office: Regional Water Management Program Manager, 208 W. 3rd St., Suite 101, Williamsport, PA 17701, (570) 327-3574.

Centre County Conservation District, 414 Holmes Ave., Suite 4, Bellefonte, PA 16823, (814) 355-6817

NPDES Permit PAS10F094. Stormwater. **Craig W. Kissell**, 311 Rt. 322, Nittany Meadow Lane, Boalsburg, PA 16827 has applied to discharge stormwater from a construction activity located in Harris Township, **Centre County** to Spring Creek, HQ-CWF.

SAFE DRINKING WATER

Applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Southeast Regional Office: Sanitarian Regional Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.

A. 2300504. Public Water Supply. **Philadelphia Suburban Water Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010. This proposal involves the renovations of the Tinicum Booster Pump Station that includes pump upgrades, chlorination facilities, tank rehabilitation and a new emergency generator in Tinicum Township, **Delaware County**.

Bureau of Water Supply Management, Division of Drinking Water Management, 400 Market Street, Harrisburg, PA 17105, contact: Godfrey C. Maduka, (717) 787-9037.

A. 9996496. Nirvana, Inc., One Nirvana Plaza, Forestport, NY 13338; Mosafar Rafizadeh, Owner. Applicant requests Department approval to sell bottled water in Pennsylvania under the brand name: Nirvana Natural Spring Water.

Northwest Regional Office: Regional Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6899.

A. 2400501. Ridgway Township Municipal Authority, P. O. Box 43, Ridgway, PA 15853. This proposal involves the construction of a water main, a 278,000 gallon water storage tank, and related appurtenances in the Boot Jack area of Ridgway Township, **Elk County.**

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 1

Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard, or who intend to remediate a site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, or a combination of the cleanup standards, or who receives approval of a special industrial area remediation identified under the act, will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific cleanup standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified below proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified below. During this comment period the municipality may request that the person identified below, as the remediator of the site, develop and implement a public involvement plan. Requests to be involved, and comments, should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, please contact the Environmental Cleanup Program Manager in the Department of Environmental Protection Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Northcentral Regional Office: Michael C. Welch, Environmental Cleanup Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (570) 321-6525.

PPL—Decommissioned Centralia Substation, Centralia Borough, **Columbia County.** Lisa A. Palfey, PPL Generation, LLC, One Scotch Pine Drive, Hazleton, PA 18201-9760 has submitted a Notice of Intent to Remediate soil contaminated with PCBs. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Shamokin News-Item* on October 30, 2000.

Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.

Nine Mile Run Slag Disposal Site, City of Pittsburgh (Squirrel Hill), **Allegheny County.** Mulugetta Birru, Urban Redevelopment Authority, 200 Ross Street, Pittsburgh, PA 15219-2069 has submitted a Notice of Intent to Remediate soil contaminated with lead and heavy metals. The applicant proposes to remediate the site to meet the site specific standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Pittsburgh Post Gazette* on December 11, 2000.

Northwest Regional Office: Craig Lobins, Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6648.

Tops Markets, Inc., 97 and 98 E. Corydon St. and 14 S. David St., Bradford Township, **McKean County,** and Raymond F. Laport of GZA Geo Environmental, 364 Nagel Drive, Buffalo, NY 14225, has submitted a Notice of Intent to Remediate soil and groundwater. The site has been found to be contaminated with lead, heavy metals, solvents, BTEX, PAHs. The applicant proposes to remediate the site to meet the Site Specific Standard in a Special Industrial Area. A Notice of the Intent to Remediate will be published in the *Bradford Journal*.

SOLID AND HAZARDOUS WASTE

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Applications submitted under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.

Southeast Regional Office: Regional Solid Waste Manager, Suite 6010, 555 North Lane, Lee Park, Conshohocken, PA 19428.

A. 101429. Richard S. Burns and Company, Inc., Transfer Station and Processing Facility, 4300 Rising Sun Avenue, Philadelphia, PA 19140. This application was received for a permit modification to increase the capacity of the transfer station and processing facility from 200 tons per day to 1,000 tons per day. Application was received in the Southeast Regional Office on December 5, 2000.

AIR QUALITY

Notice of Plan Approval and Operating Permit Applications

Nonmajor Sources and Modifications

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

Notice is hereby given that the Department has received applications for plan approvals and/or operating permits from the following facilities. Although the sources covered by these applications may be located at a major facility, the sources being installed or modified do not trigger major new source review or prevention of significant deterioration requirements.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Offices identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of the proposed Plan Approval or Operating Permit must indicate their interest to the Department Regional Office within 30 days of the date of this notice, and must file protests or comments on a proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any comments or protests filed with the Department Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts, which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior to the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the Regional Office indicated below. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121 through 143, the Federal Clean Air Act and regulations adopted under the act.

OPERATING PERMITS

Applications Received and Intent to Issue Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F (relating to operating permit requirements).

Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (570) 826-2531.

45-318-030: Custom Designs & Manufacturing Co., Inc., (P.O. Box 216, Pocono Summit, PA 18346) for operation of the paint spray operations and associated air cleaning devices in Tobyhanna Township, **Monroe County**.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

38-03029: Elk Corp. of Texas—Myerstown Facility (401 Weavertown Road, Myerstown, PA 17067) for a Natural Minor Operating Permit for an asphalt roofing shingle manufacturing facility in Jackson Township, **Lebanon County**.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

47-318-009: Aldan Industries, Inc. (115 Woodbine Lane, Danville, PA 17821-0429) for operation of a fabric coating and curing operation and associated air cleaning device (a thermal oxidizer) in Mahoning Township, **Montour County**.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

65-00778: Three Rivers Marine & Rail Terminals (2200 Springfield Pike, Suite 300, Connellsville, PA 15425) for operation of a coal loading facility at Gibsonton Yard in Rostraver Township, **Westmoreland County**.

04-00502: Shasta, Inc. (300 9th Street, Monaca, PA 15061) for operation of three grinding machines at Aliquippa Plant in Aliquippa, **Beaver County**.

04-000-033: NOVA Chemicals, Inc. (400 Frankfort Road, Monaca, PA 15061-2298) for their thermoplastic resin manufacturing facility at their Beaver Valley Plant in Monaca, **Beaver County**. NOVA Chemicals Inc. has requested that the Department modify the RACT Plan to include changes. This action entails:

- Correction of a math error in tallying their total facility wide VOC emission cap of 468 tons/year in Condition # 4 (formerly labeled #2).
- Correction of the overall permit condition numbering error.
- Clarification of language in Condition # 3 (formerly labeled # 1).
- Stating that the RACT Operating Permit and associated limitations cover only those sources identified in their June 19, 1995 RACT proposal.
- Clarification of language in Condition # 5 (formerly labeled # 3).
- Removing the reference to Table 4-1 and replacing it with a Department approved parametric monitoring plan.

Notice of Intent to Issue Title V Operating Permits

Under 25 Pa. Code § 127.521 and § 127.424, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to the following facilities. These facilities are major facilities subject to the operating permit requirements under Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F and G (relating to operating permit requirements; and Title V operating permits).

Appointments to review copies of the Title V application, proposed permit and other relevant information must be made by contacting Records Management using the appropriate regional office telephone number noted. For additional information, contact the appropriate regional office noted.

Interested persons may submit written comments, suggestions or objections concerning the proposed Title V permit to the regional office within 30 days of publication of this notice. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the persons submitting the comments, along with the reference number of the proposed permit. The commentator should also include a concise statement of any objections to the permit issuance and the relevant facts upon which the objections are based. Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the Regional Office identified below. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department reserves the right to hold a public hearing on the proposed action based upon the information received during the public comment period and will provide notice of any scheduled public hearing at least thirty days in advance of the hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

04-00227: Koppel Steel Corp.—Ambridge Plant (P. O. Box 750, Beaver Falls, PA 15010) in Beaver Falls, **Beaver County**. The permit is being significantly modified to incorporate changes of the RACT Approval. The facility has the potential of emitting more than 100 tons of oxides of nitrogen (NO_x) and is considered to be major for the emissions of greater than 25 tons of hazardous air pollutants.

Interstate Ozone Transport Reduction

Proposed Revisions to Title V/State Only Operating Permits to Establish NO_x Allowance Allocations and to Include Conditions Relating to NO_x Budget Trading Program

The Department of Environmental Protection (Department) intends to issue new or revise existing Title V/State Only Operating Permits to incorporate the provisions of 25 Pa. Code §§ 145.1—145.90. These regulations establish a NO_x Budget and a NO_x Budget Trading Program for NO_x budget units for the purpose of achieving the health-based ozone ambient air quality standard. The Department is establishing the NO_x Allowance Allocations for each NO_x budget unit under the provisions of 25 Pa. Code § 145.42.

The new or revised Title V/State only operating permits will, beginning in 2003, require the owner or operator of each NO_x budget unit to hold a quantity of NO_x allowances by November 30 of each year not less than the total NO_x emissions for the control period from the NO_x budget unit. One NO_x Allowance is the limited authorization to emit one ton of NO_x during the NO_x Allowance Control Period, which begins May 1 of each year and ends September 30 of the same year. The NO_x allowances held in the source's current year NO_x Allowance Tracking System (NATS) compliance and overdraft accounts must be equal to or greater than the total NO_x emitted from the source during the year's NO_x allowance control period. The initial NO_x allowance control period begins on May 1, 2003.

The new or revised Title V/State only operating permits will also include emission monitoring, reporting and recordkeeping requirements for each NO_x budget source. NO_x emissions from each NO_x budget source shall be monitored, reported and recorded in accordance with 25 Pa. Code §§ 145.30 and 145.70 through 145.76.

Persons wishing to file protests or comments on the proposed Title V/Operating Permits or allocations must submit the protest or comment within 30 days from the date of this notice. Interested persons may also request that a hearing be held concerning the proposed permits or allocations. Any comments or protests filed at the below address must include a concise statement of the objections to the issuance of the permit and/or allocations and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation, where the facility is located, at least 30 days prior to the date of the hearing.

Copies of the proposed permits, allocations and other relevant information are available for review at the address given.

Bureau of Air Quality, Division of Permits, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325.

	Electric Generation Units	Non Electric Generation Units
State Trading	47,224	3,619
Program Budget		
Sum of NO _x	44,863	3,438
Budget Unit		
Allowance Allocations 2003—2007		

There is also a combined 2,542 allocation set aside for 2003—2007 for all newly affected electric and nonelectric generation units.

The following allowances reflect a change from a notice published in the November 4, 2000, *Pennsylvania Bulletin*. FPL Energy purchased the cogen facility gas turbine listed below from Sunoco, Inc. where the gas turbine NO_x affected source was previously listed.

23-0084: FPL Energy MH50 LP (700 Universe Blvd., Juno Beach, FL 33408) located in Marcus Hook Borough, **Delaware County**.

NO _x affected		
Source: Cogen		
Facility Gas		
Turbine	Point ID: 090	Allowance: 163

23-0001: Sunoco Inc. (R & M) (P. O. Box 426, Marcus Hook, PA 19061-0426) located in Marcus Hook Borough, **Delaware County**

NO_x affected

Source: Boiler 7 Point ID: 089 Allowance: 102

PLAN APPROVALS

Applications Received and Intent to Issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements).

Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (570) 826-2531.

54-321-006B: Guilford Mills, Inc. (Gold Mills, Inc., 1 Penn Dye Street, Pine Grove, PA 17963) for construction of a tenter-frame dryer (#3) and associated air cleaning device at the Penn Dye Plant in Pine Grove Borough, **Schuylkill County**.

54-399-030: Silberline Manufacturing Co., Inc. (P. O. Box B, Tamaqua, PA 18252) for construction of an aluminum pigment process (silvet production) in Rush Township, **Schuylkill County**.

39-399-050: Apollo Metals LTD (1001 14th Avenue, P. O. Box 4045, Bethlehem, PA 18018-0045) for modification of a copper plating system, solution evaporators and associated air cleaning device in Bethlehem, **Lehigh County**.

66-315-042: Proctor & Gamble Paper Products Co. (P. O. Box 32, Mehoopany, PA 18629) for installation of new diaper converting lines with associated air cleaning devices in Washington Township, **Wyoming County**. Proctor & Gamble Paper Products Co. is a major facility subject to Title V permitting requirements. The installation will allow the company to market a new diaper product. The new diaper converting lines will be controlled by two new drum filters which will reduce particulate emissions to 0.35 ton per year. The Plan Approval will contain conditions requiring the source to show compliance with the emission rates. The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

66-399-002: Proctor & Gamble Paper Products Co. (P. O. Box 32, Mehoopany, PA 18629) for the installation of a central dust collection system in Washington Township, **Wyoming County**. Proctor & Gamble Paper Products Co. is a major facility subject to Title V permitting requirements. The installation will collect particulate matter from air cleaning devices of the diaper converting processes. Particulate emissions will be reduced by the use of a baghouse control system which will reduce particulate matter emissions to 2.19 tons per year. The Plan Approval will contain conditions requiring the source to show compliance with the emission rates. The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

66-399-001: Proctor & Gamble Paper Products Co. (P. O. Box 32, Mehoopany, PA 18629) for installation of a new paper additive delivery system in Washington Township, **Wyoming County**. Proctor & Gamble Paper Products Co. is a major facility subject to Title V permitting

requirements. This system will use low VOC content paper additives to minimize the VOC emissions. The company will be limited to emit 4.7 tpy of VOCs on a 12 month rolling sum from this system. The Plan Approval will contain conditions requiring the source to show compliance with the emission rate. The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

06-05007A: Carpenter Technology Corp. (P. O. Box 14662, Reading, PA 19612-4662) for modification of the boilers in Building 48 in Reading City, **Berks County**. Some of the sources are subject to 40 CFR Part 60, Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.

07-03038: Amerway, Inc. (3701 Beale Avenue, Altoona, PA 16601) for installation of Baghouse #2 to control tin lead solder alloy melting pots in the City of Altoona, **Blair County**.

21-05037A: Union Quarries, Inc. (P. O. Box 686, Carlisle, PA 17013) for installation of a replacement asphalt plant with fabric filter at the Bonny Brook Quarry in South Middleton Township, **Cumberland County**. The asphalt plant is subject to 40 CFR Part 60, Subpart I—Standards of Performance for Hot Mix Asphalt Facilities.

28-05020: T. B. Woods, Inc. (440 North Fifth Avenue, Chambersburg, PA 17201-1778) for installation of two knockout boxes and a fabric collector to control existing shot blast machines and grinding stations in Chambersburg Borough, **Franklin County**.

36-03039: Nissin Foods (USA) Co., Inc. (Masako Place, 2901 Hempland Road, Lancaster, PA 17601) for construction of one 11,824,000 (Natural Gas) Btu/hr boiler and one 11,552,000 (No. 2 Fuel Oil) Btu/hr boiler both manufactured by Mira Boiler Co., Ltd. at the Lancaster Plant in East Hempfield Township, **Lancaster County**. These sources are subject to 40 CFR Part 60, Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.

36-03122: Allegheny Energy Resources, Inc. (301 Fifth Avenue, Room 307, McKeesport, PA 15132) for construction of a landfill gas recycling facility controlled by an incinerator at Chester County Solid Waste Authority's Lanchester Landfill in Caernarvon Township, **Lancaster County**.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

30-131A: Foree Oil Co. (8235 Douglas Avenue, Suite 402 LB 27, Dallas, TX 75225) for operation of Combustion Engines/Gas Heated Dehydrator at Foree Compressor Station in Franklin Township, **Greene County**.

Notice of Intent to Approve

Plan Approval Application PA-63-014D

Under 25 Pa. Code § 127.44(a)(4), the Department of Environmental Protection (Department) intends to issue a Plan Approval to Orion Power Midwest for the installation of SNCR on Units 1—3 at the Elrama Power Station, as described in its application received on September 21, 2000.

Copies of the application, the Department's analysis and other documents used in evaluation of the application are available for public inspection during normal business hours at the following address: Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222.

In order for the Department to assure compliance with all applicable standards, the Department proposes to place the following conditions on the Plan Approval:

Special Conditions for Plan Approval PA-63-014D

1. The source is to be constructed in accordance with the plans submitted with the application (as approved herein).

2. Upon completion of the construction of the above indicated air contamination source an operating permit application must be obtained from the person noted.

3. This plan approval is for the installation of an ESA designed SNCR system on Boilers 1—3 at Elrama Power Station located in Union Township, Washington County.

4. The outlet stack exhaust concentration of NH_3 from units 1—3 shall not exceed 3 ppm_v (ammonia slip).

5. Stack testing to determine the emission rate of ammonia (as NH_3) and carbon monoxide (CO) shall be conducted no later than 90 days after installation.

6. Stack testing shall be performed in accordance with 25 Pa. Code Chapter 139 regulations and the Department's Source Testing Manual.

7. Two copies of a pre-test protocol shall be submitted to the Department for review at least 60 days prior to the performance of the stack tests.

8. The Department shall be notified at least 2 weeks prior to the stack test of the date and time of the test so that an observer may be present.

9. Two copies of the stack test results shall be supplied to the Department for review within 60 days of completion of the testing.

10. This Plan Approval authorizes temporary operation of the sources covered by this Plan Approval provided the following conditions are met.

a) The Department must receive written notice from the Owner/Operator of the completion of construction and the operator's intent to commence operation at least 5 working days prior to the completion of construction. The notice should state when construction will be completed and when operator expects to commence operation.

b) Operation is authorized only to facilitate the start-up and shake-down of sources and air cleaning devices, to permit operations pending the issuance of an Operating Permit or to permit the evaluation of the sources for compliance with all applicable regulations and requirements.

c) This condition authorizes temporary operation of the sources for a period of 180 days from the date of commencement of operation, provided the Department receives notice from the Owner/Operator under subpart (a), above.

d) The Owner/Operator may request an extension if compliance with all applicable regulations and Plan Approval requirements has not been established. The extension request shall be submitted in writing at least 15 days prior to the end of this period of temporary operation and shall provide a description of the compliance

status of the source, a detailed schedule for establishing compliance, and the reasons compliance has not been established.

e) The notice submitted by the Owner/Operator under subpart (a), above, prior to the expiration of this Plan Approval, shall modify the plan approval expiration date. The new plan approval expiration date shall be 180 days from the date of the written notice.

Any person wishing to provide the Department with additional information which they believe should be considered prior to the issuance of the Plan Approval may submit the information to the Department of Environmental Protection at the address shown below. A 30-day comment period, from the date of this publication, will exist for the submission of comments. Each written comment must contain the following:

- Name, address and telephone number of the person submitting the comments.
- Identification of the proposed Plan Approval (specify the Plan Approval number).
- Concise statements regarding the relevancy of the information or objections to issuance of the Plan Approval.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in this newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to: Joseph Pezze, Regional Air Quality Program Manager, Department of Environmental Protection, Southwest Region—Field Operation, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

For additional information you may contact the following at the same address: Thomas J. Joseph, Air Pollution Control Engineer III, Air Quality Control.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

Notice of Intent to Issue a Plan Approval and Amend a Title V Operating Permit

In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b) the Department of Environmental Protection (Department) intends to issue a plan approval to Seneca Landfill, Inc. (Hartmann Road, Evans City, PA 16033) for their plant in Jackson and Lancaster Townships, Butler County. The facility currently has a Title V Operating Permit. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit through an administrative amendment at a later date.

Seneca intends to operate a portable rock crushing plant in conjunction with their landfill expansion and forthcoming mining operations. Seneca desires to begin operation of the crusher during the 1st quarter 2001. The rock crusher facility will be located within the landfill's existing solid waste disposal permitted area. The crusher equipment components will include one jaw crusher, one impact crusher, one screening unit and various conveyor belts and stackers. Seneca is limiting the rock crushing operations to 10 hours a day, 5 days a week for a total of 2,600 hours per year. A maximum of 150 tons of material will be processed by the crusher equipment per hour with

a maximum of 1.9 million tons of material to be processed over the next 5 years. The source is not subject to Federal NSPS or NESHAP standards.

43-310E: Duferco Farrell Corp. (15 Roemer Boulevard, Farrell, PA 16121) for construction of new annealing furnaces to replace the existing furnaces in No. 21 and 22 areas in Farrell, **Mercer County**. The public notice is required for sources required to obtain a Plan Approval at Title V facilities in accordance with 25 Pa. Code § 127.44. The permit will be subject to the following conditions:

1. Maximum steel throughput for #21/#22 annealing furnaces shall not exceed 770,000 tons per year based on a 12-month consecutive period.

2. Natural gas usage for each area (#21 and #22 areas) shall be maintained on a monthly basis. These records shall be maintained for at least 5 years and made readily available to Department personnel upon request.

3. The NO_x emission rate from the annealing furnaces shall not exceed 0.065 pounds per million BTU.

4. A stack test shall be performed in accordance with the provisions of Chapter 139 to determine the emission rates (lb/MMBTU) of NO_x and CO pollutants. A minimum of three furnaces shall be tested. The stack tests shall be performed while the aforementioned sources are operating at the maximum rated capacity as stated on the application.

The above conditions will satisfy the requirements of 25 Pa. Code § 127.12b (pertaining to plan approval terms and conditions) and will demonstrate the Best Available Technology for the source.

MINING

APPLICATIONS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District mining office indicated above each application. Where a 401 water quality certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for such certification.

Written comments or objections, or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public

notices of filing of permit applications, opportunity for comment, and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52 and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.

Coal Applications Received

17950113. Waroquier Coal Company (P. O. Box 128, Clearfield, PA 16830), renewal of an existing bituminous surface mine permit in Greenwood Township, **Clearfield County** affecting 60.2 acres. Receiving streams: unnamed tributary 1 and 2 to Watts Creek to Watts Creek to Clearfield Creek to West Branch of the Susquehanna River. Application received November 27, 2000.

Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.

03950104. State Industries, Inc. (P. O. Box 1022, Kittanning, PA 16201). Renewal application received for continued reclamation of a bituminous surface auger mine with incidental sandstone and shale removal and a portable crusher located in East Franklin and Washington Townships, **Armstrong County**. Receiving streams: unnamed tributaries to Limestone Run and an unnamed tributary to the Allegheny River. Renewal application received: December 4, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.

33000103. Falls Creek Energy Co., Inc. (R. D. 6, Box 231, Kittanning, PA 16201). Commencement, operation, and restoration of a bituminous surface strip and auger operation in McCalmont Township, **Jefferson County** affecting 56.0 acres. Receiving streams: Big Run. Application received: November 22, 2000.

43850105. C & K Coal Company (P. O. Box 69, Clarion, PA 16214). Renewal of an existing bituminous surface strip operation in Pine and Mercer Townships, **Mercer and Butler Counties** affecting 96.0 acres. Re-

ceiving streams: Two unnamed tributaries to Swamp Run. Application received: November 30, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

49960201R. Split Vein Coal Co., Inc. (R. R. 1, Box 1027, Paxinos, PA 17860-9637), renewal of an existing coal refuse reprocessing operation in Mt. Carmel Township, **Northumberland County** affecting 77.5 acres, receiving stream—none. Application received November 28, 2000.

40823001R3. Kaminski Brothers, Inc. (303 New Boston Road, Pittston, PA 18640-9611), renewal of an existing anthracite surface mine operation in Jenkins Township, **Luzerne County** affecting 28.2 acres, receiving stream—none. Application received December 1, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.
Noncoal Applications Received

43950302. Atlantic States Materials of PA, Inc. (P. O. Box 269, Mercer, PA 16137). Renewal of an existing sand and gravel operation in East Lackawannock Township, **Mercer County** affecting 107.0 acres. Receiving streams: Unnamed tributary to Beaver Run and Beaver Run to Neshannock Creek. Renewal of NPDES Permit No. PA0227030. Application received December 4, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

5176SM6C2. American Asphalt Paving Co. (500 Chase Road, Shavertown, PA 18708), renewal and correction of NPDES Permit No. PA0593761 in Falls Township, **Wyoming County**, receiving stream—unnamed tributary to Susquehanna River. Application received December 4, 2000.

APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT

ENCROACHMENTS

The following permit applications and requests for Environmental Assessment approval and requests for water quality certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. 1341(a)), requires the State to certify that the involved projects will not violate the applicable provisions of 33 U.S.C.A. §§ 1311–1313, 1316 and 1317 as well as relevant State requirements. Initial requests for 401 certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under Section 401 or to the issuance of a Dam Safety or Encroachment Permit, or the approval of Environmental Assessments must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Application received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.

Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

E46-882. Encroachment. Montgomery County, Department of Roads and Bridges, P. O. Box 311, Norristown, PA 19404-0311. To perform the following activities associated with the bridge replacement and roadway improvements for Cedar Hill Road:

1. To remove an existing simple span steel truss bridge and to construct and maintain, in its place, a single span prestressed concrete spread box beam bridge across Park Creek (WWF-MF) and to place and maintain associated riprap scour protection at both abutments. The proposed structure will have a clear span of 62.32 feet and an underclearance of 9.61 feet. The amount of wetland impact is considered a de minimis impact and wetland mitigation is not required.

2. To construct and maintain a temporary cofferdam associated with the diversion of stream flow through the project area.

The site is located approximately 2,800 feet northeast of the intersection of Cedar Hill Road and Strong Lane (Ambler, PA USGS Quadrangle N: 16.1 inches; W: 10.2 inches) in Horsham Township, **Montgomery County**.

E23-408. Encroachment. Delaware County, Government Center Bldg., Room 206, Media, PA 19063-2788. To remove an existing single span, pony truss bridge across Ridley Creek (WWF-MF). The demolition will include the removal of the existing abutments, wingwalls and the roadway approaches. The bridge is located approximately 1,300 feet west of the intersection of Ridley Mill Lane and Irvington Lane (AKA East 25th Street), (Bridgeport, NJ-PA Quadrangle, N: 22.3 inches; W: 15.00 inches) in the City of Chester and Nether Providence Township, **Delaware County**.

Northeast Regional Office: Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

E35-376. Encroachment. Charles Miller, 13046 Maple Drive, Clarks Summit, PA 18411. To remove existing silts and sediments from an existing pond and to expand the pond by approximately 20 feet on the western side. The project is located approximately 2,500 feet east of the intersection of S. R. 3001 and Maple Drive, Ransom, PA Quadrangle N: 13.7 inches; W: 3.5 inches), Newton Township, **Lackawanna County** (Baltimore District, U. S. Army Corps of Engineers).

E39-393. Encroachment. LaFarge Corporation, 5160 Main Street, Whitehall, PA 18052-1827. To modify and maintain an existing intake structure along the Lehigh River (WWF), with work consisting of constructing a steel bar screen against the face of the intake house. The project includes removal of stone fill, within an area of approximately 25 feet by 15 feet, which had been placed in the river during an emergency to facilitate clearing of the intake opening. The project proposes to provide periodic removal of debris and sediment within an area of 20 feet by 25 feet, in front of the intake. The project is located along the west bank of the Lehigh River, approxi-

mately 300 feet south of the S. R. 0329 Bridge (Cementon, PA Quadrangle N: 11.7 inches; W: 0.5 inch), Whitehall Township, **Lehigh County** (Philadelphia District, U. S. Army Corps of Engineers).

E39-394. Encroachment. **Whitehall Township**, 3219 MacArthur Road, Whitehall, PA 18052. To repair and maintain the existing Robbins Street Bridge across Spring Creek (CWF), having a waterway opening of approximately 12.1 feet by 7 feet, with work including replacement of the concrete slab deck, repair of the concrete abutments and placement of riprap for scour protection. The bridge is located approximately 1,500 feet upstream of S. R. 0145 (Cementon, PA Quadrangle N: 13.1 inches; W: 3.9 inches), Whitehall Township, **Lehigh County** (Philadelphia District, U. S. Army Corps of Engineers).

E39-395. Encroachment. **Borough of Emmaus**, 28 South Fourth Street, Emmaus, PA 18049. To remove the existing structure and to construct and maintain a twin 48-inch SLCPP stormwater outfall structure along a tributary to Leibert Creek (HQ-CWF). The project is located on the north side of Broad Street, approximately 250 feet east of the intersection of Broad Street and 10th Street (Allentown West, PA Quadrangle N: 5.1 inches; W: 0.3 inch), Emmaus Borough, **Lehigh County** (Philadelphia District, U. S. Army Corps of Engineers).

E40-560. Encroachment. **James and Dorothy Johns**, 55 North Mountain Boulevard, Mountaintop, PA 18707. To authorize fill that was placed in 0.21 acre of wetlands, within a drainage basin of Bow Creek for the purpose of constructing a dental office and associated parking. The project is located on 1.27 acres on the west side of S. R. 309 (Wilkes-Barre West, PA Quadrangle N: 5.3 inches; W: 2.6 inches), Wright and Fairview Townships, **Luzerne County** (Baltimore District, U. S. Army Corps of Engineers). The applicant proposes to contribute to the Pennsylvania Wetland Replacement Project in lieu of replacing wetlands onsite.

E48-299. Encroachment. **Northampton County**, 669 Washington Street, Easton, PA 18042. To remove the existing structure and to construct and maintain a pre-stressed concrete box beam bridge having a single normal span of 40 feet and an underclearance of 9.5 feet across Monocacy Creek (CWF). The bridge is known as County Bridge No. 102 and is located along Township Road T436 (Georgetown Road), approximately 500 feet north of Hanoverville Road, Nazareth, PA Quadrangle N: 11.8 inches; W: 14.4 inches, Lower Nazareth Township, **Northampton County** (Philadelphia District, U. S. Army Corps of Engineers).

Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

E01-218. Encroachment. **Randy Test**, Test Enterprises, Inc., 1235 Abbottstown Pike, Hanover, PA 17331. To construct and maintain 120 linear feet of open bottom multi-plate aluminum pipe-arch culvert having an 11-foot clear span with a 5.67-foot rise across an unnamed tributary to Beaver Creek on Deer Trail Drive from its intersection with Abbottstown Pike (SR 0194). Construction of a second open bottom aluminum multi-plate

pipe-arch culvert of 140 linear feet having a 7.75-foot clear span with a 6-foot rise to cross another unnamed tributary to Beaver Creek on Orchard View Drive and intersect with Deer Trail Drive for access within the Test Estates residential development. The permit also authorizes construction of an 8-inch diameter PVC sanitary sewer line within the roadway embankment of Deer Trail Drive. The site is located (Hanover, PA Quadrangle N: 19.0 inches; W: 15.0 inches) in Berwick Township, **Adams County**.

E22-422. Encroachment. **Michael Velott**, Colonial Ridge, Inc., 4800 Linglestown Road, Ste. 306, Harrisburg, PA 17112. To authorize previously placed fill material in 0.001 de minimis acre of wetlands in conjunction with the construction of a single family residence located on Lot 21 of the Colonial Ridge Residential Development (Harrisburg East, PA Quadrangle N: 15.5 inches; W: 7.0 inches) in Lower Paxton Township, **Dauphin County**.

E36-699. Encroachment. **William Adams**, Lancaster Township, 1240 Maple Avenue, Lancaster, PA 17603. To rehabilitate and maintain the banks of Little Conestoga Creek by removing manmade and natural obstructions, constructing a rock vane, rock and log frame channel deflector, stabilizing stream bank erosion, and establishing a riparian buffer located just downstream of Columbia Avenue bridge (PA 462) (Lancaster, PA Quadrangle N: 6.8 inches; W: 13.0 inches) in Lancaster and Manor Townships, **Lancaster County**.

E36-700. Encroachment. **Patsy Davis**, Pequea Township, 1028 Millwood Road, Willow Street, PA 17584. To construct and maintain a 48-inch outfall and its associated structures along the right bank of Goods Run (TSF) located immediately downstream of Baumgardner Road bridge (LR 36027) (Conestoga, PA Quadrangle N: 5.2 inches; W: 4.6 inches) in Pequea Township, **Lancaster County**.

E07-340. Encroachment. **Earl Neiderhiser**, **PennDot 9-0**, 1620 North Juniata Street, Hollidaysburg, PA 16648. To construct a 6-inch concrete slab and place original stream bed material on top of slab between the existing abutment of a bridge across the channel of a tributary to New Creek (HQ-CWF) at a point at SR 1016 (Frankstown, PA Quadrangle N: 17.33 inches; W: 9.95 inches) in Frankstown Township, **Blair County**.

E31-167. Encroachment. **George Epps Norfolk Southern Railway Co.**, 600 W. Peachtree St., Atlanta, GA 30308. To construct a fiber optics line across the channel of Little Juniata River (TSF) at a Norfolk Southern Railroad Crossing (Alexandria, PA Quadrangle N: 13.75 inches; W: 11.5 inches) in Logan Township, **Huntingdon County**.

Northcentral Region: Water Management, Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third St., Suite 101, Williamsport, PA 17701.

E14-375. Encroachment. **SEDA-COG Joint Rail Authority**, R. R. 1, Box 372, Lewisburg, PA 17837. To modify, operate and maintain two bridges across Buffalo Run (High Quality-Cold Water Fishery); to remove three existing structures and construct, operate and maintain nine stream crossings of unnamed tributaries to Buffalo Run (High Quality-Cold Water Fishery); to place and

maintain fill in 0.36 acre of wetlands associated to Buffalo Run (Exceptional Value Wetlands); and to remove two existing bridges across Buffalo Run (High Quality-Cold Water Fishery) for the improvement of 3.6-miles of railway. The structures authorized for construction, operation and maintain shall be so as follows:

Structure Number	Number of Pipes or Spans	Diameter or Rise	Length or Span
Bridge NO. 3	2	7-feet (rise)	17-feet (span)
Bridge NO. 4	1	30-feet (rise)	13.5-feet (span)
Culvert No. 3	1	4-feet (rise)	12-feet (span)
Culvert No. 7	1	30-inches (diameter)	50-feet (length)
Culvert No. 9	1	30-inches (diameter)	40-feet (length)
Culvert No. 14	1	5.9-feet (rise)	3.9-feet (span)
Culvert No. 18	1	5.9-feet (rise)	3.9-feet (span)
Culvert No. 21	1	5.9-feet (rise)	3.9-feet (span)
Culvert No. 26	1	5-feet (rise)	5-feet (span)
Culvert No. 26A	1	5-feet (rise)	5-feet (span)
Culvert No. 27	1	5.9-feet (rise)	3.9-feet (span)

Construction of all in-stream structures and stream restoration shall be completed in dry work conditions through dam and pumping or fluming stream flow around work area. All rock used for in-stream structures, diversions and mitigation shall be non-erodible materials that are free of fines and silts. The project will permanently impact 0.36 acre of wetland while impacting 600-feet of waterway. The project is located along the western right-of-way of SR 0550 approximately 5,000 feet north of Upper Gyp Road and SR 0550 intersection (Bellefonte, PA Quadrangle N: 4 inches; W: 10 inches) in Benner and Spring Townships, **Centre County**. The 0.36-acre of permanently impacted wetlands shall be successfully mitigated by 0.44 acre of replacement wetlands. The 600-feet of permanently impacted waterway shall be successfully mitigated by 0.12 acre of stream restoration. The replacement wetland and stream restoration shall be completed prior to commencement of any construction activity authorized by this permit.

E17-354. Encroachment. Wallaceton-Boggs Municipal Authority, P. O. Box 97, West Decatur, PA 16878. To install, operate and maintain a gravity sewer line beneath Laurel Run (Cold Water Fishery); Simeling Run (Cold Water Fishery); unnamed tributaries to Simeling Run (Cold Water Fishery); and through wetlands associated to Laurel Run and Simeling Run (Exceptional Value Wetlands) for the collection and conveyance of municipal wastewater. Cumulatively the gravity sewer line will be constructed with a minimum installation link of 125-feet beneath Laurel Run, 15-feet beneath Simeling Run, 20-feet beneath the unnamed tributaries, and 1695-feet through the wetlands. All sewer line installations between October 1 and December 31 shall be conducted by borings; sewer line installations outside this time frame shall be conducted in dry work conditions through the use of dam and pumping or fluming stream flow around the work area. All stone use for in-stream channel use shall be free of fines and silt. The project permanently impacts 160-feet of waterway while temporarily impacting 0.77 acre of wetland. The project is located along the southern and northern right-of-way of SR 0322 at the intersection of SR 2024 and SR 0322 (Wallaceton, PA Quadrangle N: 12 inches; W: 5 inches) in Boggs Township and Wallaceton Borough, **Centre County**. This permit also au-

thorizes the construction, operation, maintenance and removal of temporary stream crossings for equipment access; all crossings shall be constructed with suitable rock that is free of fines and silt. All temporary stream crossings shall be removed and the areas of stream bank disturbance stabilized immediately upon removal.

E19-207. Encroachment. Paul E. Heise, District Manager, Pennsylvania Department of Transportation, P. O. Box 218, Montoursville, PA 17754-0218. To remove the existing single span concrete encased steel I-beam bridge having a span of 53 feet and an average underclearance of 6.5 feet and to construct and maintain a single span prestressed concrete box beam bridge with a clear span of 56.5 feet and a normal waterway opening of 40 feet, on a skew of 45 degrees and an underclearance of 6.5 feet over the East Branch of Briar Creek on SR 1023, Section 005, approximately 0.17 mile southeast of SR 1014 (Mifflinville, PA Quadrangle N: 12.13 inches; W: 7.86 inches) in Briar Creek Township, **Columbia County**. The project will not impact wetlands while impacting approximately 80 feet of waterway.

The East Branch of Briar Creek is a Cold Water Fisheries Stream.

Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E26-278. Encroachment. Western Pennsylvania Conservancy, Box R, Route 381 South, Mill Run, PA 15464. To construct and maintain utility lines across Bear Run (EV) at two locations for onsite use at Fallingwater Historic Site: the first crossing known as Gardner's Cottage Bridge Crossing, consists of water and sanitary sewer pipelines and fiber optic conduit/cable and telephone conduit/cable for onsite use attached to an existing bridge by suspension underside of the bridge located approximately 2,500 feet upstream of Youghiogheny River (Mill Run, PA Quadrangle N: 5.72 inches; W: 12.68 inches). The second crossing, known as Mine House Bridge Crossing, consists of a water pipeline using an existing pipeline embedded in an existing concrete bridge deck located approximately 2,500 feet upstream of the Youghiogheny River (Mill Run, PA Quadrangle N: 5.68 inches; W: 13.2 inches) in Stewart Township, **Fayette County**.

WATER ALLOCATIONS

Applications received under the act of June 24, 1939 (P. L. 842, No. 365) (32 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of the Commonwealth.

Southwest Regional Office, Regional Manager; Water Supply Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

WA65-212C. Water Allocation. Latrobe Municipal Authority, P. O. Box 88, Latrobe, PA 15650. The applicant is requesting the right to withdraw 9,000,000 gallons per day (peak day) from the H. A. Seward Reservoir (Trout Run) and Kingston Dam (Loyalhanna Creek).

WA11-237B. Water Allocation. Borough of Patton Water Works, P. O. Box 175, Patton, PA 16668. The applicant is requesting the right to withdraw 750,000 gallons per day from the Patton Dam, Chest Creek.

ACTIONS

FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System
Program (NPDES)]

DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

(Part I Permits)

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications and requests for plan approval and has issued the following significant orders.

Any person aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514), and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Actions under The Clean Streams Law (35 P. S. § 691.1—691.1001).

Permits Issued

Southeast Regional Office: Regional Water Management Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.

NPDES Permit No. PA0024180. Amendment No. 1. Sewage. **Berks-Montgomery Municipal Authority**, P. O. Box 370, 136 Municipal Drive, Gilbertsville, PA 19525. Applicant is granted approval for an amendment to reroute the Swamp Creek Sewage treatment plant located in Douglass Township, **Montgomery County**.

NPDES Permit No. PA0030431. Sewage. **Fox Valley Community Services, Inc.**, P. O. Box 971, Concordville, PA 19331. Is authorized to discharge from a facility located in Concord Township, **Delaware County**, into West Branch of Chester Creek.

NPDES Permit No. PA0034100. Sewage. **Malvern Courts, Inc.**, 85 Bacton Hill Road, Frazer, PA 19355. Is authorized to discharge from a facility located in East Whiteland Township, **Chester County** into Valley Creek.

NPDES Permit No. PA0013463. Industrial Waste. **U. S. Steel Group**, A Unit of USX Corporation-Fairless Works, Fairless Hills, PA 19030. Is authorized to discharge from a facility located in Falls Township, **Bucks County** into the Delaware River Zone 2.

NPDES Permit No. PA0026468. Sewage. **Lower Bucks County Joint Municipal Authority**, 7811 New

Falls Road, Levittown, PA 19058-0460. Is authorized to discharge from a facility located in Bristol Township, **Bucks County** into the Delaware River (Estuary Zone 2).

WQM Permit No. 0900417. Sewage. **Bucks County Water and Sewer Authority**, 1275 Almshouse Road, Warrington, PA 18976. Applicant is granted approval for the construction and operation of a sanitary sewer force main and to upgrade Pump Station No. 6 located in New Hope Borough and Solebury Township, **Bucks County**.

Northeast Regional Office: Water Management Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

NPDES Permit No. PA-0007757-A1 (Transfer). Industrial Waste, **BPB America, Inc.**, 2424 Lakeshore Road West, Mississauga, ON L5J 1K4, Canada, is authorized to discharge from a facility located in Exeter Township, **Luzerne County** to North Branch of the Susquehanna River.

NPDES Permit No. PA-0060861. Sewerage. **Wayne Highland School District**, 474 Grove Street, Honesdale, PA 18431 is authorized to discharge from a facility located in Preston Township, **Wayne County** to an unnamed tributary to Equinunk Creek.

WQM Permit No. 3500404. Sewerage. **The City of Scranton Sewer Authority**, 307 North Washington Avenue, Scranton, PA is granted approval for modifications to its sewage treatment plant—upgrade to the chlorination facility, addition of sulfur dioxide dechlorination system, construction of post-aeration system and modifications to the sludge thickening and sludge storage process, City of Scranton, **Lackawanna County**.

WQM Permit No. 4000403. Sewerage. **Wyoming Valley Sanitary Authority**, P. O. Box 33A, Wilkes-Barre, PA 18703 is granted approval for the replacement of three existing screw pumps at the headworks pumping station with four submersible non-clog centrifugal pumps. The sewage treatment facility is located in Hanover Township, **Luzerne County**.

Southcentral Regional Office: Regional Water Management Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.

Permit No. PA0080195 00-1. Sewerage. **Anvil International, Inc.**, 1411 Lancaster Avenue, Columbia, PA 17512 is authorized to discharge from a facility located in Columbia Borough, **Lancaster County** to the receiving waters of an unnamed tributary of Shawnee Run.

Permit No. PA0088421 T-1. Sewerage. **Patrick T. Gibson**, 2887 Chaneyville Road, Clearville, PA 15535-8828 is authorized to discharge from a facility located in Southampton Township, **Bedford County** to the receiving waters of an unnamed tributary to Town Creek.

Permit No. PA0009776. Sewerage. **The Pfaltzgraff Company** (West York Facility), Bowman Road, P. O. Box 244, Thomasville, PA 17364 is authorized to discharge from a facility located in West York Borough and West Manchester Township, **York County** to the receiving waters of an unnamed tributary of Codorus Creek in Watershed 7-H (Codorus Creek).

Permit No. PA0081442. Sewerage. **South Eastern School District**, P. O. Box 217, Fawn Grove, PA 17321 is authorized to discharge from a facility located in Fawn Township, **York County** to the receiving waters of an unnamed tributary to Falling Branch Creek in Watershed 7-I (Kreutz—Muddy Creeks).

Permit No. 3677204 00-1. Sewage. **Anvil International, Inc.**, 1411 Lancaster Avenue, Columbia, PA 17512. This permit approves a name change from Supply Sales/Grinnel to Anvil International, Inc. in Columbia Borough, **Lancaster County**.

Permit No. 0695202 00-1. Sewage. **Process Recovery Corporation**, 2909 Windmill Road, Sinking Spring, PA 19608. This permit approves modifications to the construction/operation of Industrial Waste Treatment Facilities in Cumru Township, **Berks County**.

Permit No. 3600407. Sewage. **Columbia Municipal Authority**, 308 Locust Street, Columbia, PA 17512. This permit approves modifications to the construction/operation of Sewage Treatment Facilities in Columbia Borough, **Lancaster County**.

Permit No. 050045 00-1. Sewage. **Patrick T. Gibson**, 2887 Chaneyville Road, Clearville, PA 15535-8828. This permit approves the construction of Sewage Treatment Facilities in Southampton Township, **Bedford County**.

Permit No. 6700408. Sewage. **South Eastern School District**, P.O. Box 217, Fawn Grove, PA 17321. This permit approves the construction of Sewage Treatment Facilities in Fawn Township, **York County**.

Northcentral Regional Office: Department of Environmental Protection, 208 West Third Street, Suite 101, Grit Building, Williamsport, PA 17701.

Permit No. PA0114596. Industrial Waste Amendment. **Avery Dennison Chemical Division US**, Draketown Road, Mill Hall, PA 17751-9601. Construction of water storage tank and cooling tower will replace existing pond. Facility located at Bald Eagle Township, **Clinton County**.

Permit No. PA0008443. Industrial Waste Amendment. **PPL Generation LLC**, 2 North Ninth Street, Allentown, PA 18101-1179. Permit amended to delete the limitation for total chlorine residual at Outfalls 050 and 052. Also amended to update chronic WET test dilution series as a result of increase discharge flow. Facility located at Derry Township, **Montour County**.

WQM Permit No. 4900404. Sewerage. **Charles and Barbara Carpenter**, R.R. 1, Box 959, Paxinos, PA 17860. Permission granted to replace malfunctioning septic system serving a single residence small flow system located at Shamokin Township, **Northumberland County**.

Southwest Regional Office: Water Management Program

Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

Permit No. 462S25-A1. Sewerage. **Youngwood Borough Authority**, 17 South Sixth Street, Youngwood, PA 15697. Modification and operation of Sanitary Sewers and Pump Station located in Youngwood Borough, **Westmoreland County** to serve Depot Street.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.

NPDES Permit No. PA0024741. Sewage. **Municipal Authority of the Township of Sheffield**, 20 Leather Street, Sheffield, PA 16347 is authorized to discharge from a facility located in Sheffield Township, **Warren County** to the West Branch Tionesta Creek.

NPDES Permit No. PA0001481. Industrial Waste. **Damascus Tube Company**, 795 Reynolds Industrial Park, Greenville, PA 16125 is authorized to discharge from a facility located in Pymatuning Township, **Mercer County** to the Shenango River.

NPDES Permit No. PA0223131. Sewage. **Living Church International, Inc.**, R.R. 1, Box 131, Fairmont City, PA 16224 is authorized to discharge from a facility located in Redbank Township, **Clarion County** to an unnamed tributary to Pine Creek.

NPDES Permit No. PA0221139. Sewage. **Timber-view POL**, 2235 Main, Zelienople, PA 16063 is authorized to discharge from a facility located in Jackson Township, **Butler County** to an unnamed tributary to Breakneck Creek.

NPDES Permit No. PA0002453. Industrial Waste. **Sharpsville Quality Products**, 2 North 6th Street, Sharpsville, PA 16150 is authorized to discharge from a facility located in Sharpsville, **Mercer County** to the Shenango River.

NPDES Permit No. PA0031879. Sewage. **Pittsburgh District Church of the Nazarene**, 177 North Road, Butler, PA 16001 is authorized to discharge from a facility located in Franklin Township, **Butler County** to an unnamed tributary to Mulligan Run.

NPDES Permit No. PA0100021. Sewage. **Five Forks Sewage Association**, HCR 3, Box 9, Tionesta, PA 16353 is authorized to discharge from a facility located in Tionesta Township, **Forest County** to the Allegheny River.

INDIVIDUAL PERMITS

(PAS)

The following NPDES Individual Permits for Discharges of Stormwater from Construction Activities have been issued.

Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.

<i>NPDES Permit No.</i>	<i>Applicant's Name and Address</i>	<i>County Municipality</i>	<i>Receiving Stream or Body of Water</i>
PAS10-G024-R	Charlestown Oaks, Inc. 2 EF Raymond Drive Havertown, PA 19083	Charlestown Township Chester County	Little Valley Creek (EV)
PAS10-G410	Brandywine Realty Trust 14 Campus Boulevard, Suite 100 Newtown Square, PA 19073	East Goshen Township Chester County	Ridley Creek/Delaware (HQ-TSF)

<i>NPDES Permit No.</i>	<i>Applicant's Name and Address</i>	<i>County Municipality</i>	<i>Receiving Stream or Body of Water</i>
PAS10-G416	Coventry Ridge Limited Partnership 1890 Rose Cottage Lane Malvern, PA 19355	East Coventry Township Chester County	Pigeon Creek (HQ-TSF)

INDIVIDUAL PERMITS

(PAR)

Notice of Intent (NOI) for Coverage under NPDES and/or Other General Permits

The following parties have submitted (1) Notices of Intent (NOIs) for Coverage under General NPDES Permits to discharge wastewater into the surface of this Commonwealth; (2) NOIs for coverage under General Permits for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania; or (3) Notifications for First Land Application of Sewage Sludge.

The EPA Region III Regional Administrator has waived the right to review or object to this permit action under the waiver provision: 40 CFR 123.24.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangement made for copying at the contact office noted.

*List of NPDES
and/or other
General Permit Type*

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater From Construction Activities
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit for Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Non-Exceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-10	General Permit for Discharge Resulting From Hydrostatic Testing of Tanks and Pipelines
PAG-11	(TO BE ANNOUNCED)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)

General Permit Type—PAG-2

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
West Bradford Township Chester County	PAR10-G396	General Residential Properties 666 Exton Commons, Exton, PA 19341	Unnamed Tributary East Branch Brandywine River (WWF-MF)	Department of Environmental Protection Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Concord Township Delaware County	PAR10-J187	Dickinson Development Company P. O. Box 100, Chadds Ford, PA 19317	West Branch Chester Creek (TSF)	Department of Environmental Protection Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Horsham Township Montgomery County	PAR10-T669	Gigliotti Welsh Road Associates, LP P. O. Box 270, Newtown, PA 18940	Park Creek (WF, M)	Department of Environmental Protection Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Whitemarsh Township Montgomery County	PAR10-T472	The Norlen Group 505 1/2 Germantown Pike Lafayette Hill, PA	Sandy Run (TSF)	Department of Environmental Protection Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Worcester Township Montgomery County	PAR10-T648	Worcester Township P. O. Box 767, Worcester, PA 19490	Zacharias Creek (TSF)	Department of Environmental Protection Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Bryn Athyn Borough Montgomery County	PAR10-T683	Bryn Athyn Borough 2835 Buck Road, Bryn Athyn, PA 19009	Tributary to Huntingdon Creek (TSF, M)	Department of Environmental Protection Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Luzerne County Hanover Township	PAR10R213	Earth Conservancy 101 S. Main St. Ashley, PA 18706	Sugar Notch Run Solomon's Creek	Luzerne CD (570) 674-7991
Northampton County Allen Township	PAR10U146	Kreidersville Land Co. c/o Wasyl Mauser 1460 Old Carriage Rd. Northampton, PA 18067	Hokendauqua Creek CWF	Northampton CD (610) 746-1971
Erie County Millcreek Township	PAR10K172	Joseph Montagna 811 Lowell Avenue Erie, PA 16505	UNT to Walnut Creek (CWF; MF)	Erie Conservation District 12723 Route 19 P. O. Box 801 Waterford, PA 16441 (814) 796-4203
Erie County Millcreek Township	PAR10K174	Pastore, Inc. 2315 Grandview Blvd. Erie, PA 16506	UNT to Walnut Creek (CWF; MF)	Erie Conservation District 12723 Route 19 P. O. Box 801 Waterford, PA 16441 (814) 796-4203
Erie County Summit Township	PAR10K175	Scott's Development Co. P. O. Box 3306 Erie, PA 16508	Tributary to Walnut Creek (CWF; MF)	Erie Conservation District 12723 Route 19 P. O. Box 801 Waterford, PA 16441 (814) 796-4203
Lawrence County Shenango Township	PAR103744	Berner International Corporation Attn: Mark McNulty R. D. 3, Wilmington Road P. O. Box 5205 New Castle, PA 16105	UNT to Big Run (WWF)	Lawrence Conservation District Lawrence Co. Government Center 430 Court Street New Castle, PA 16101-3593 (724) 652-4512

General Permit Type—PAG-3

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Philadelphia County City of Philadelphia	PAR200002	Allied Tube & Conduit Corp. 11350 Norcom Road Philadelphia, PA 19154	UNT to Walton Run and (3J Pennypack Watershed)	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Bucks County Falls Township	PAR220002	Commonwealth Wood Preservers of PA, Inc. 400 Rock Run Road Fairless Hills, PA 19030	Rock Run	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Philadelphia County City of Philadelphia	PAR140021	Perfecseal, Inc. 9800 Bustleton Avenue Philadelphia, PA 19115	UNT to Pennypack Creek and (3J Pennypack Watershed)	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Delaware County Lower Chichester Township	PAR230024	Esschem Incorporated 4000 Columbia Avenue Linewood, PA 19061	Delaware River	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Montgomery County Whitemarsh Township	PAR230073	McNeil Consumer Healthcare 7050 Camp Hill Road Fort Washington, PA 19034	Sandy Run Creek and (3F Wissahickon Watershed)	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Bucks County Milford Township	PAR600067	Gene's Used Auto Parts 1275 Kumry Road Pennsburg, PA 18073	Stony Run Creek and Perkiomen Watershed	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Delaware County Lower Chichester Township	PAR800104	Federal Express Corporation—ZTYRT Station 1500 Blue Ball Road Linwood, PA 19061	Naaman Creek	DEP Southeast Region Water Management 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Glenshaw Allegheny County	PAR216124	Glenshaw Glass Company 1101 William Flynn Highway Glenshaw, PA 15166	Pine Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Mt. Pleasant Borough Westmoreland County	PAR216149	Blairsville Wilbert Vault Co. 100 North East Lane Blairsville, PA 15717	Sherrick Run to Jacobs Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

General Permit Type—PAG-4

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Bedford County Juniata Township	PAG043668	Nina Rightenour P. O. Box 23 New Baltimore, PA 15552	Kegg Run	DEP—Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Locust Township Columbia County	PAG045105	Albert L. and Brenda M. Klinger R. D. 3, Box 325 Catawissa, PA 17820	UNT to Roaring Creek	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Wayne Township Clinton County	PAG044901	Harold E. Heaton R. D. 1, Box 416A Lock Haven, PA 17745	UNT West Br. Susquehanna	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Lewis Township Northumberland County	PAG044880	Norman D. Eisley P. O. Box 221, R. D. 2 Turbotville, PA 17772	UNT Beaver Run	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Shamokin Township Northumberland County	PAG045106	Charles and Barbara Carpenter R. R. 1, Box 959 Paxinos, PA 17860	Bennys Run	Northcentral 208 W. Third St. Williamsport, PA 17701 (717) 327-3664
Westmoreland County Hempfield Township	PAG046221	Paul M. Barr, Jr. 2474 Long Street Greensburg, PA 15601	UNT of Slate Creek	Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Redbank Township Clarion County	PAG048358	Dane N. Rowe 5733 Route 66 Fairmount City, PA 16224	Leasure Run	DEP Northwest Region Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Slippery Rock Township Butler County	PAG048701	W. Robert Hunter 419 Centerville Pike Slippery Rock, PA 16057	Slippery Rock Creek	DEP Northwest Region Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-5

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Delaware County Springfield Township	PAG-050015	Springfield Township 50 Powell Rd. Springfield, PA 19064	Stoney Creek	Southeast Region Water Management Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Westmoreland County Rostraver Township	PAG056152	CoGo's Company 2589 Boyce Road Pittsburgh, PA 15241	UNT to the Youghiogheny River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

General Permit Type—PAG-10

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream, Body of Water or Site Name and Address</i>	<i>Contact Office and Telephone No.</i>
Statewide Use	PAG109607	Equitable Gas Company 200 Allegheny Center Mall Pittsburgh, PA 15212	Statewide Use— Water body information to be provided to the Department before discharge	DEP Central Office 400 Market Street Harrisburg, PA 17105 (717) 787-8184

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Revision approval granted December 5, 2000 under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

*Regional Office: Water Management Program Manager,
Southcentral Region, 909 Elmerton Avenue, Harrisburg,
PA 17110-8200.*

*Location: Pleasant Hills Resort Campground STP.
Northeast of SR 3011 along Middle Ridge. Juniata and
Penn Townships, Huntingdon County.*

Project Description: Approval of a revision to the Official Sewage Plan of Juniata and Penn Townships, Huntingdon County. Project involves construction of a small flow sewage treatment facility to serve 38 proposed additional camp sites. Treated effluent will be discharged to an unnamed tributary to Raystown Lake.

The Department's review of the sewage facilities update revision has not identified any significant impacts resulting from this proposal.

Plan revision approval granted December 6, 2000 under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

*Regional Office: Water Management Program Manager,
Southcentral Region, 909 Elmerton Avenue, Harrisburg,
PA 17110-8200.*

Location: 4 W. Water St., Abbottstown, PA 17301.

The approved plan provides for an expansion of the existing **Abbottstown-Paradise Joint Municipal Authority** sewage treatment plant from a current capacity of .215 mgd to .350 mgd. Municipalities involved include Hamilton Township, Abbottstown Borough, and Berwick Township in **Adams County**, and Paradise Township in **York County**.

The Department's review of the sewage facilities update revision has not identified any significant impacts resulting from this proposal.

Plan approvals granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

*Northcentral Regional Office: Department of Environmental Protection, Water Management Program Manager,
208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (570) 327-0530.*

Location: State College Borough and College, Ferguson, Halfmoon, Harris and Patton Townships, Centre County—The University Area Joint Authority service area.

Project Description: The approved plan calls for expansion of the existing UAJA wastewater treatment facility from 6.0 to 9.0 mgd to provide for continuing growth and development in the greater State College service area. Since the receiving stream for the existing discharge, Spring Creek, is designated HQ-CWF by Chapter 93 of the Department's regulations, and because it is a renowned trout fishery, the municipality selected an expansion plan which avoids additional discharge to the Creek.

The project will involve the construction of nutrient removal facilities for the entire proposed 9.0 mgd flow. Up to 6 mgd of the treated effluent will continue to be discharged to Spring Creek.

Additional "polishing" treatment facilities will be constructed to provide advanced treatment to an additional 3.0 mgd. This waste stream will be subject to microfiltration, reverse osmosis or nanofiltration and ultraviolet disinfection. A portion of this flow will be conveyed via a new transmission line for reuse by industrial, commercial and/or agricultural customers. The remainder will be conveyed via a new transmission line to Slab Cabin Run, an intermittent tributary of Spring Creek. The highly treated product of this process will be used to augment base flow in Slab Cabin Run.

The project will be constructed in three phases, with 0.75 mgd of new capacity brought on-line in 2004, another 0.75 mgd in 2008 and the final 1.5 mgd in 2013.

The Department's review of the sewage facilities update revision has not identified any significant negative environmental impacts resulting from this proposal.

Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

Location: Borough of Big Run, Big Run Borough, Jefferson County. Borough of Big Run, P. O. Box 437, Big Run, PA 15715.

Project Description: This approved project proposes three changes to the 537 Base Plan:

1. The proposed wastewater treatment plant will be moved to a higher elevation and situated beyond the Big Run Borough line in Henderson Township.

2. Treatment technology was changed due to the limited area at the new location, so a modified activated sludge process known as Upflow Sludge Blanket Filtration has been proposed.

3. The location of gravity sewers and force mains has been modified to minimize PennDOT right-of-way encroachments.

The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Southeast Regional Office: Sanitarian Regional Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.

Permit No. 1500507. Public Water Supply. **Nottingham Towers Apartments**, 10 Harbour Court, Nottingham, PA 19362. A permit has been issued for the permitting and upgrades of the Nottingham Towers Apartments existing non-permitted water supply system. The upgrades will include installation of a storage tank, chemical feed systems, service pumps, and hydropneumatic tanks in East Nottingham Township, **Chester County**. *Type of Facility:* Public Water Supply System. *Consulting Engineer:* Evans Mill Environmental, Inc., 101 Fellowship Road, Uwchlan, PA 19480. *Permit to Construct Issued:* November 14, 2000.

Southcentral Regional Office: Sanitarian Regional Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4708.

Permit No. 0600506. Public water supply. **Western Berks Water Authority, Berks County**. *Responsible Official:* E. David Wenger, Authority Chairperson, Western Berks Water Authority, 91 Water Road, Sinking Spring, PA 19608-9633. *Type of Facility:* New dissolved air flotation clarification units. *Consulting Engineer:* Deborah M. Watkins, Inc., 1400 Weston Way, West Chester, PA 19380. *Permit to Construct Issued:* December 6, 2000.

Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.

Permit No. Minor Amendment. The Department issued a construction permit to **Benton Municipal Water & Sewer Authority**, P. O. Box 516, Benton, PA 17814-0516, Benton Borough, **Columbia County**. This permit authorizes construction of a caustic soda feed system and replacement of the gas chlorination facilities with sodium hypochlorite feed at the EPD pressure and filtration plant.

Southwest Regional Office: Regional Manager, Water Supply Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

Permit No. 0200503. Public Water Supply. **Plum Borough Municipal Authority**, 4555 New Texas Road, Pittsburgh, PA 15239. *Type of Facility:* Addition of chlorinator building to High School Pump Station. *Permit issued for Construction:* November 28, 2000.

Permit No. 5600507. Public Water Supply. **Meyersdale Municipal Authority**, 226 Center Street, Meyersdale, PA 15552. *Type of Facility:* Fike Hollow Road Water Storage Tank. *Permit issued for Construction:* November 28, 2000.

Permit No. 1100503. Public Water Supply. **Redevelopment Authority of Cambria County**, 401 Candlelight Drive, Suite 209, P. O. Box 93, Ebensburg, PA 15931. *Type of Facility:* 53,000 gallon storage tank, booster station, transmission main, distribution piping and 6 fire hydrants (Onnalinda system). *Permit issued for Construction:* November 28, 2000.

Permit No. 5687504-A1. Public Water Supply. **Garrett Borough**, 307 Municipal Road, P. O. Box 218, Garrett, PA 15542. *Type of Facility:* Corrosion control (Aqua Mag), two metering pumps and appurtenances. *Permit issued for Construction:* November 28, 2000.

Permit No. 5026048. Public Water Supply. **Crystal Springs Water Company**, 45 West Noblestown Road, Carnegie, PA 15106. *Type of Facility:* Amendment for bottled water sold under "Giant Eagle Distilled Water" and "Giant Eagle Spring Water." *Permit issued for Operation:* November 28, 2000.

Permit No. 5600505. Public Water Supply. **Seven Springs Municipal Authority**, R. D. 1, Helen Road, Champion, PA 15622. *Type of Facility:* Sunset Reservoir. *Permit issued for Construction:* November 28, 2000.

Permit No. 5600506. Public Water Supply. **Stoystown Borough Municipal Authority**, P. O. Box 324, Stoystown, PA 15563-0324. *Type of Facility:* Well # 10 (Egler Test Well). *Permit issued for Construction:* November 21, 2000.

Permit No. 5600508. Public Water Supply. **Central City Water Authority**, 241 Sunshine Avenue, Central City, PA 15926. *Type of Facility:* Clean and repaint four water storage tanks. *Permit issued for Construction:* November 21, 2000.

Permit No. 3000501. Public Water Supply. **East Dunkard Water Association**, Box 241, Dilliner, PA 15327. *Type of Facility:* East Dunkard bolted steel water storage tank. *Permit issued for Construction:* November 21, 2000.

Northwest Regional Office: Regional Manager, 230 Chestnut Street, Meadville, PA, (814) 332-6899.

Permit No. 4300502. Public Water Supply. **Pine Grove Mobile Home Park**, 374 North Perry Highway, Mercer, PA 16137 has been issued a construction permit for Well No. 6 in Coolspring Township, **Mercer County**. *Type of Facility:* Community Water Supply. *Consulting Engineer:* K.E.A., Inc., 6124 East State St., P. O. Box 1267, Hermitage, PA 16148-0267. *Permit to Construct Issued:* December 8, 2000.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 2

The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the Act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or non-residential exposure factors, a description of the remediation performed, and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected.

For further information concerning the final report, please contact the Environmental Cleanup Program Manager in the Department Regional Office under which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

Northeast Regional Field Office: Joseph Brogna, Regional Environmental Cleanup Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Scranton Army Ammunition Plant (a.k.a. Chamberlain Manufacturing Corporation), City of Scranton, **Lackawanna County**. David Everitt III, Environmental Scientist, MEA, Inc., 201 Center Street, Stockertown, PA 18083 has submitted a Final Report (on behalf of his clients, the Department of the Army and Chamberlain Manufacturing Corporation) concerning the remediation of site soils and groundwater found or suspected to have been contaminated with petroleum products and metals. The report was submitted to document remediation of the site to meet the Statewide health standard.

Northcentral Regional Office: Michael C. Welch, Environmental Cleanup Program Manager; 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (570) 321-6525.

Boskov's Auto Center—Susquehanna Valley Mall, Monroe Township, **Snyder County**. Vitillo Corporation, on behalf of their client Boskov's Auto Center, Routes 11 and 15, Susquehanna Valley Mall, Selinsgrove, PA 17870, has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with BTEX and PHCs. The report is intended to document remediation of the site to meet the Statewide health standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908) and Chapter 250 Administration of Land Recycling Program.

Provisions of 25 Pa. Code § 250.8 Administration of Land Recycling Program requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final action on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the Land Recycling and Environmental Remediations Standards Act (Act). Plans and reports required by provisions of the Act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report, and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of reuse of the property, and in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. A cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or non-residential exposure factors, a description of the remediation performed, and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, please contact the Environmental Cleanup Program Manager in the Department of Environmental Protection Regional Office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department of Environmental Protection has acted upon the following plans and reports:

Southeast Regional Office: Environmental Cleanup Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.

Williamsburg Village Properties L.P., Towamencin Township, **Montgomery County**. Marc Selover, P.G., Environmental Resolutions, Inc., 124 Gaither Drive, Suite 160, Mt. Laurel, NJ 08054-1719, has submitted a Final Report concerning remediation of site soil contaminated with solvents. The report demonstrated attainment of the Statewide health standard and was approved by the Department on October 10, 2000.

Abington Shopping Center, Abington Township, **Montgomery County**. Dennis Fisher, NTH Consultants, Ltd., 860 Springdale Drive, Exton, PA 19341, has submitted a combined Site Investigation, Risk Assessment and Cleanup Plan Report concerning remediation of site soil and groundwater contaminated with solvents. The report was approved by the Department on October 10, 2000.

Sunoco Station #0460-8998, New London Township, **Chester County**. Jennifer L. O'Reilly, Groundwater & Environmental Services, Inc., 410 Eagleview Blvd., Suite 110, Exton, PA 19341, has submitted a Final Report concerning remediation of site soil contaminated with BTEX and petroleum hydrocarbons. The report demonstrated attainment of the Statewide health standard and was approved by the Department on October 11, 2000.

Sun Pipe Line Company, East Goshen Township, **Chester County**. Jennifer L. Stafford, P.G., Groundwater & Environmental Services, Inc., 410 Eagleview Blvd., Suite 10, Exton, PA 19341, has submitted a Remedial Investigation and Risk Assessment Report concerning remediation of site soil and groundwater contaminated with BTEX and petroleum hydrocarbons. The report was approved by the Department on October 12, 2000.

Main Street at Exton, West Whiteland Township, **Chester County**. J. Anthony Sauder, P.G., Pennoni Associates, Inc., 3001 Market Street, Suite 200, Philadelphia, PA 19104, has submitted a Remedial Investigation/Risk Assessment Report/Cleanup Plan concerning remediation of site soil contaminated with heavy metals, solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons and groundwater contaminated with solvents, BTEX, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. The report was approved by the Department on October 12, 2000.

Riverfront North Site—Property A, Bristol Borough, **Bucks County**. Michael A. Christie, P.G., Penn Environmental & Remediation, Inc., 2755 Bergey Road, Hatfield, PA 19440, has submitted a Final Report concerning remediation of site soil contaminated with lead, heavy metals, solvents, and polycyclic aromatic hydrocarbons. The report demonstrated attainment of the Statewide health standard and was approved by the Department on October 23, 2000.

Unisys and Former Lockheed Martin Site, Tredyfrin Township, **Chester County**. Randy L. Shuler, Environmental Resources Management, Inc., 250 Phillips Blvd., Suite 280, Ewing, NJ 08618, has submitted a Final Report concerning remediation of site soil and groundwater contaminated with heavy metals and solvents. The report demonstrated attainment of the Statewide health and site-specific standards and was approved by the Department on October 26, 2000.

Millennium—The Center for Internet Excellence, Conshohocken Borough, **Montgomery County**. Richard P. Almqvist, Jr., Oxford Engineers and Consultants, Inc., 2621 Van Buren Ave., Suite 500, Norristown, PA 19401, has submitted a Baseline Environmental Report as it applies to a Special Industrial Area site. The report was approved by the Department on October 27, 2000.

Amtrak 2.5 Acre Site—Richmond Station, City of Philadelphia, **Philadelphia County**. Craig Caldwell, National Railroad Passenger Corp., Amtrak, 30th and Market Sts., Philadelphia, PA 19104, has submitted a Final Report concerning remediation of site soil contaminated with lead, heavy metals, BTEX and polycyclic aromatic hydrocarbons and groundwater contaminated with BTEX and polycyclic aromatic hydrocarbons. The report demon-

strated attainment of the Statewide health standard and was approved by the Department on October 27, 2000.

Former Atlantic Service Station 0363-0431, Upper Darby Township, **Delaware County**. Michael Sarcinello, Groundwater & Environmental Services, Inc., 410 Eagleview Blvd., Suite 110, Exton, PA 19341, has submitted a Remedial Investigation/Final Report concerning remediation of site soil contaminated with BTEX and groundwater contaminated with BTEX and petroleum hydrocarbons. The report demonstrated attainment of the Statewide health and site-specific standards and was approved by the Department on October 31, 2000.

Burns Residence, Bristol Township, **Bucks County**. Brian R. Evans, Hydrocon Services, Inc., 2945 South Pike Avenue, Allentown, PA 18103, has submitted a Final Report concerning remediation of site soil contaminated with BTEX and polycyclic aromatic hydrocarbons. The report demonstrated attainment of the Statewide health standard and was approved by the Department on November 6, 2000.

Thomas H. Bliss, Patricia Bliss and Blissco Partnership, East Nottingham Township, **Chester County**. Phillip F. Gray, Jr., Storb Environmental Inc., 410 North Easton Road, Willow Grove, PA 19090, has submitted a Final Report concerning remediation of site soil contaminated with BTEX and petroleum hydrocarbons. The report demonstrated attainment of the Statewide health standard and was approved by the Department on November 7, 2000.

Dahle Residence, Lower Merion Township, **Montgomery County**. Marco Droese, P.G., Mulry & Cresswell Environmental, Inc., 1691 Horseshoe Pike, Glenmoore, PA 19343, has submitted a Final Report concerning remediation of site soil contaminated with BTEX and petroleum hydrocarbons. The report demonstrated attainment of the Statewide health standard and was approved by the Department on November 11, 2000.

SOLID AND HAZARDOUS WASTE

LICENSE TO TRANSPORT HAZARDOUS WASTE

License expired under the Solid Waste Management Act (35 P.S. §§ 6018.1001–6018.1003) and regulations for license to transport hazardous waste.

Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P.O. Box 8471, Harrisburg, PA 17105-8471.

ABC Tank Co., Inc., P.O. Box 111, Clayton, NJ 08312; License No. **PA-AH 0342**; license expired on November 30, 2000.

Disposal Systems, Inc., P.O. Box 6696, Freehold, NJ 07728; License No. **PA-AH 0470**; license expired on November 30, 2000.

Griffin Industrial Services, Inc., P.O. Box 519, East Syracuse, NY 13057; License No. **PA-AH 0471**; license expired on November 30, 2000.

Select Transportation, Inc., 5055 Nike Drive, Columbus, OH 43026; License No. **PA-AH 0469**; license expired on November 30, 2000.

Hazardous waste transporter license voluntarily terminated under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport hazardous waste.

Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

ADCOM Express, Inc., 2462-C South Santa Fe Avenue, Vista, CA 92084-8002; License No. **PA-AH S158**; license terminated December 1, 2000.

License issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.

Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

Culp Petroleum Company, Inc., P. O. Box 10815, Rock Hill, SC 29731; License No. **PA-AH 0673**; license issued December 1, 2000.

Renewal licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.

Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

Envirite of Illinois, Inc., 16435 S. Center Avenue, Harvey, IL 60426; License No. **PA-AH 0547**; renewal license issued December 4, 2000.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permits issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.

Regional Office: Regional Solid Waste Manager, Lee Park, 555 North Lane, Suite 6010, Conshohocken, PA 19428.

Permit No. 101432, Superior Waste Services of Delaware Valley, Inc., Water and Washington Streets, Norristown, PA 19401. A Permit modification was issued to extend the operating and waste acceptance hours for Superior's municipal waste transfer station (f/k/a Santangelo Transfer Station) located in the Borough of Norristown, **Montgomery County**. Permit was modified by the Southeast Regional Office on December 7, 2000.

A. 101549. Waste Management Disposal Services of Pennsylvania, Inc., 1425 Sell Road, Pottstown, PA 19464. Two applications were returned for expansions of the Pottstown Landfill. One application was for a vertical expansion of the permit area of the Pottstown Landfill—Eastern Expansion. The second application was for a vertical expansion of the permit area on top of the closed portions of the Pottstown Landfill. Because of application deficiencies, the administrative reviews were terminated and both applications were returned by the Southeast Regional Office on December 7, 2000.

PREVIOUSLY UNPERMITTED CLASS OF SPECIAL HANDLING WASTE INFECTIOUS OR CHEMOTHERAPEUTIC WASTE

Amended license issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.

Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.

Sterilogic Waste Systems, Inc., 3220 Tillman Drive, Suite 107, Bensalem, PA 19020; License No. **PA-HC 0208**; amended license issued December 4, 2000.

AIR QUALITY OPERATING PERMITS

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (570) 826-2531.

45-310-022: Haines & Kibblehouse, Inc.—Locust Ridge Quarry (HC 88, Box 282, Pocono Lake, PA 18347) for construction and operation of portable stone crushing plant in Tobyhanna Township, **Monroe County**.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

17-18: American Refining and Exploration Co. (100 Four Falls Corporate Center, Suite 215, West Conshohocken, PA 19428) on November 15, 2000, for construction and operation of a 450 horsepower natural gas-fired compressor engine and associated catalytic converter pursuant to the General Plan Approval and General Operating Permit for Natural Gas Production Facilities (BAQ-GPA/GP-5) in Huston Township, **Clearfield County**.

19-01A: Bernardi Italian Foods (595 West 11th Street, Bloomsburg, PA 17815) on November 21, 2000, for operation of a 20.92 million BTU per hour natural gas-fired boiler equipped with a low NOx burner/flue gas recirculator pursuant to the General Plan Approval and General Operating Permit for Small Gas and No. 2 Oil Fired Combustion Units (BAQ-GPA/GP-1) in Bloomsburg Town, **Columbia County**.

Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F and/or G (relating to operating permit requirements).

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

41-329-001A: Lycoming County Resource Management Services (P. O. Box 187, Montgomery, PA 17752) on November 7, 2000, for operation of two 860 horsepower landfill gas-fired internal combustion engines at the Lycoming County Landfill in Brady Township, **Lycoming**

County. These engines are subject to Subpart Cc of the Federal Standards of Performance for New Stationary Sources.

08-310-003: State Aggregates, Inc. (4401 Camp Meeting Road, Center Valley, PA 18034) on November 21, 2000, for operation of a sand and gravel processing plant in Sheshequin Township, **Bradford County**. This plant is subject to Subpart 000 of the Federal Standards of Performance for New Stationary Sources.

49-318-034: Milton Steel, Inc. (6 Canal Street, Milton, PA 17847) on November 21, 2000, for operation of two steel parts surface coating dip tanks in Milton Borough, **Northumberland County**. These tanks are subject to Subpart EE of the Federal Standards of Performance for New Stationary Sources.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

04-00044: Zinc Corp. of America (300 Frankfort Road, Monaca, PA 15061) for operation of Zinc Smelting at Monaca Zinc Smelter in Potter Township, **Beaver County**.

Administrative Operating Permit Amendments Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450 (relating to administrative operating permit amendments).

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

49-313-035K: Merck & Co., Inc. (P. O. Box 600, Danville, PA 17821) on December 7, 2000, to incorporate conditions established in Plan Approvals 49-313-035L and 49-313-035M for various pieces of pharmaceutical process equipment in Riverside Borough, **Northumberland County**.

17-399-013: Burke-Parsons-Bowlby Corp. (R. R. 3, Box 275, Dubois, PA 15801) on December 7, 2000, to incorporate conditions established in Plan Approval 17-399-013A for five process/storage tanks and associated air cleaning device (a scrubber) in creosote wood-preserving operation in Sandy Township, **Clearfield County**.

PLAN APPROVALS

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements).

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

38-05016: Quaker Alloy, Inc. (200 East Richland Avenue, Myerstown, PA 17067) on November 30, 2000, for modification of the shell molding/coremaking operations at North and Center Bay—Hill Foundry in Myerstown Borough, **Lebanon County**.

67-03098: Worker-Semmel Funeral Home, Inc. (849 East Market Street, York, PA 17403) on December 7, 2000, for construction of a human crematory controlled by an afterburner at 400 Pattison Street in York City, **York County**.

Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.

49-307-003A: ISTIL (USA) Milton, Inc. (P. O. Box 298, Milton, PA 17847) on November 7, 2000, for reactivation of a steel billet reheat furnace and bar rolling mill in Milton Borough, **Northumberland County**.

59-309-001D: OSRAM Sylvania Products, Inc. (1 Jackson Street, Wellsboro, PA 16901) on November 7, 2000, for installation of an air cleaning device (a fabric collector) on a material handling operation ("Proportioner Area") in Wellsboro Borough, **Tioga County**.

49-313-032H: Merck and Co., Inc. (P. O. Box 600, Danville, PA 17821) on November 14, 2000, for installation of air cleaning devices (a thermal oxidizer and a packed bed scrubber) on various pharmaceutical process vessels in Riverside Borough, **Northumberland County**.

59-301-019: TLC Services (621 Smith Street, Mansfield, PA 16933) on November 20, 2000, for construction of a crematory incinerator in Tioga Township, **Tioga County**.

19-304-003B: S & B Foundry Co. (3825 Columbia Boulevard, Bloomsburg, PA 17815) on November 20, 2000, for construction of two 1,000 pound iron melting electric induction furnaces and associated air cleaning device (a fabric collector) in South Centre Township, **Columbia County**.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

65-706: Jeannette Specialty Glass (P. O. Box 99, North Fourth Street, Jeannette, PA 15644) reissued December 8, 2000, for glass melting tank at Jeannette Shade & Novelty Plant in Jeannette, **Westmoreland County**.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

43-322A: Thompson Fabricating, Inc. (60 Council Avenue, Wheatland, PA 16161) on December 1, 2000, for operation of a paint booth in Wheatland, **Mercer County**.

24-123B: Superior Greentree Landfill, Inc. (635 Toby Road, Kersey, PA 15846) on December 4, 2000, for installation and operation of an enclosed flare in Fox Township, **Elk County**.

Plan approvals extensions issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.13 (relating to extensions).

Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.

01-03021: Agway, Inc. d/b/a Andgrow Fertilizer (3150 Stoney Point Road, East Berlin, PA 17316) on September 20, 2000, to authorize temporary operation of a fertilizer mixing plant controlled by a fabric collector, covered under this Plan Approval until January 18, 2001, in Latimore Township, **Adams County**.

Southwest Regional Office: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4174.

65-919A: Angelo Iafrate Construction Co. (P. O. Box 259, 108B Main Street, New Stanton, PA 15672) on December 8, 2000, for operation of a crusher and asphalt plant at Carpenter Town Asphalt Plant in Mount Pleasant Borough, **Westmoreland County**.

Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.

10-313-028B: Indspec Chemical Corp. (133 Main Street, Petrolia, PA 16050) on December 31, 2000, for a resorcinol flaker in Petrolia, **Butler County**.

10-399-018: Resolite, A United Dominion Co. (Route 19 North, Box 338, Zelienople, PA 16063) on December 31, 2000, for a fiberglass pultrusion process in Jackson Township, **Butler County**.

42-185A: IA Construction Corp. (Route 155, Franklin, PA 16323) on December 30, 2000, for a batch asphalt plant in Annin Township, **McKean County**.

MINING

APPROVALS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 water quality certification. Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Quality Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

Cambria Office, 286 Industrial Park Road, Ebensburg, PA 15931-4119.

Coal Applications Issued:

32000101. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001), commencement, operation and restoration of a bituminous surface-auger mine in Rayne Township, **Indiana County**, affecting 153.9 acres, receiving stream Crooked Creek, unnamed tributary to Crooked Creek, application received March 14, 2000, permit issued December 1, 2000.

56920105, Permit Revision. Sanner Energies, Inc. (1179 Rockdale Road, Rockwood, PA 15557-6409), to change the land use from woodland to cropland and unmanaged natural habitat in Southampton Township, **Somerset County**, affecting 100.2 acres, receiving stream unnamed tributaries to North Branch of Jennings Run, application received October 2, 2000, issued December 4, 2000.

56703124, Permit Renewal. Diamond T Coal Company (P. O. Box 260, Friedens, PA 15541), for continued operation of a bituminous surface-auger mine in Stonycreek Township, **Somerset County**, affecting 568.5 acres, receiving stream Lamberts Run, application received August 29, 2000, issued December 7, 2000.

56663098, Permit Renewal. PBS Coals, Inc. (P. O. Box 260, Friedens, PA 15541), for continued operation of a bituminous-coal refuse reprocessing surface mine in Shade Township, **Somerset County**, affecting 412.3 acres, receiving stream Dark Shade Creek and Little Dark Shade Creek, application received August 29, 2000, issued December 7, 2000.

56950111, Permit Renewal. Cooney Brothers Coal Company (P. O. Box 246, Cresson, PA 16630), for continued operation of a bituminous surface and auger mine in Shade Township, **Somerset County**, affecting 248.5 acres, receiving stream unnamed tributary to Shade Creek and Shade Creek, application received September 25, 2000, permit issued December 5, 2000.

56950106, Permit Renewal. Zubek, Inc. (173 House Coal Road, Berlin, PA 15530-8822), for continued operation of a bituminous surface mine in Stonycreek Township, **Somerset County**, affecting 122.0 acres, receiving stream unnamed tributaries to Schrock Run and Schrock Run, application received June 27, 2000, issued December 7, 2000.

Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.

65950111. M. B. Energy, Inc. (175 McKnight Road, Blairsville, PA 15717-7961). Permit renewed for continued operation and reclamation of a bituminous surface mine located in Derry Township, **Westmoreland County**, affecting 84.7 acres. Receiving streams: unnamed tributary to Miller Run to Loyalhanna Creek. Application received: October 16, 2000. Renewal issued: December 4, 2000.

03950109. Walter L. Houser Coal Co., Inc. (R. R. 9, Box 434, Kittanning, PA 16201). Permit renewal issued for continued reclamation only of a bituminous surface mine located in Mahoning Township, **Armstrong County**, affecting 80 acres. Receiving streams: unnamed tributary to Mahoning Creek and Mahoning Creek. Application received: October 11, 2000. Reclamation only renewal issued: December 5, 2000.

03000104. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Permit issued for commencement, operation and reclamation of a bituminous surface/auger mine located in Valley and Kittanning Townships, **Armstrong County**, affecting 411.6 acres. Receiving streams: unnamed tributary "C" to Mill Run; unnamed tributary "D" to Mill Run; Cowanshannock Creek; unnamed tributary "A" to Cowanshannock Creek; unnamed tributary "C" to Cowanshannock Creek; unnamed tributary "B" to Mill Run; or unnamed tributary "B" to Cowanshannock Creek. Application received: April 14, 2000. Permit issued: December 7, 2000.

Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.

17980127. Warquier Coal Company (P. O. Box 128, Clearfield, PA 16830), commencement, operation and restoration of a bituminous surface mine-auger permit in Lawrence Township, **Clearfield County** affecting 53 acres. Receiving streams: unnamed tributary to Hogback Run to Hogback Run to Hogback Run to the West Branch of the Susquehanna River. Application received December 18, 1998. Permit issued December 6, 2000.

17000106. G & S Timber, Inc. (P. O. Box 207, Curwensville, PA 16833), commencement, operation and restoration of a bituminous surface mine-auger permit in Bigler Township, **Clearfield County** affecting 7.3 acres. Receiving streams: unnamed stream to Upper Morgan Run to Clearfield Creek to West Branch Susquehanna River. Application received June 26, 2000. Permit issued December 6, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.

16900113. Ancient Sun, Inc. (P. O. Box 129, Shippenville, PA 16254). Renewal of an existing bituminous strip and auger operation in Redbank Township, **Clarion County** affecting 214.6 acres. This renewal is issued for

reclamation only. Receiving streams: Two unnamed tributaries to Pine Creek. Application received: September 18, 2000. Permit Issued: November 30, 2000.

10970104. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127). Revision to an existing bituminous strip operation to add 6.0 acres of coal removal in Venango Township, **Butler County** affecting 130.8 acres. Receiving streams: Unnamed tributaries to Little Scrubgrass Creek and unnamed tributaries to Scrubgrass Creek. Application received: October 2, 2000. Permit Issued: November 28, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.

Small Noncoal (Industrial Minerals) Permits Issued

25002805. Rohrer-Blum (3180 Rt. 6, Waterford, PA 16441). Commencement, operation and restoration of a small noncoal sand and gravel operation in Amity Township, **Erie County** affecting 5.0 acres. Receiving streams: None. Application received: July 27, 2000. Permit Issued: November 30, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

58000844. Bill O'Dell (233 Delaware Street, Forest City, PA 18421), commencement, operation and restoration of a bluestone quarry operation in Harford Township, **Susquehanna County** affecting 5.0 acres, receiving stream—none. Permit issued December 4, 2000.

58008034. Jack L. McKeeby (Box 571, New Milford, PA 18834), commencement, operation and restoration of a bluestone quarry operation in Franklin Township, **Susquehanna County** 1.0 acres, receiving stream—none. Permit issued December 5, 2000.

58000805. William C. Chamberlain (R.R. 1, Box 50B, Susquehanna, PA 18847), commencement, operation and restoration of a quarry operation in Jackson Township, **Susquehanna County** affecting 2.0 acres, receiving stream—none. Permit issued December 7, 2000.

Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.

Noncoal Permits Issued

5074SM1A2C5. Valley Quarries, Inc. (P. O. Box J, Chambersburg, PA 17201-0809), renewal and correction of NPDES Permit No. PA 0122629 in Guilford Township, **Franklin County**, receiving stream—intermittent stream tributary to Conococheague Creek. Renewal/Correction issued December 5, 2000.

6477SM4A1C2. John F. Walter Excavating, Inc. (P. O. Box 175, Newville, PA 17241), renewal of NPDES Permit No. PA0612677 in Middlesex Township, **Cumberland County**, receiving stream—unnamed tributary to Conodoquinet Creek. Renewal issued December 5, 2000.

Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.

Noncoal (Industrial Minerals) Permits Issued

65900402. Pioneer Mid-Atlantic, Inc. (400 Industrial Boulevard, New Kensington, PA 15068). Permit revised to add acreage for two support areas for product stockpiles and limestone fines placement at a large noncoal (limestone) quarry located in Derry Township, **Westmoreland County**, now affecting 1,303.0 acres. Receiving streams: unnamed tributaries to both and including Harbridge Run and Tannery Hollow. Application received: May 23, 2000. Revision issued: December 5, 2000.

Knox District Office, P. O. Box 669, Knox, PA 16232.
Environmental Good Samaritan Proposals Issued:

EGS 42001. Elk County Fisherman (HCR 1, Box 199A, Ridgway, PA 15853). A project to add alkalinity to the upper reaches of Gumbo Run in Sergeant Township, **McKean County**, affecting 5.0 acres. Receiving streams: Gumbo Run. Project proposal received: October 2, 2000. Project Issued: November 20, 2000.

ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT ENCROACHMENTS

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval, and requests for Water Quality Certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Any person aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Actions on applications filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and sections 5 and 402 of The Clean Streams Law (35 P.S. §§ 691.5 and 691.402) and notice of final action for certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)). (Note: Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.)

Permits Issued and Actions on 401 Certifications:

Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

E 46-866. Encroachment Permit. **Reitnour Investment Properties—Limerick, L.P.**, 1260 Valley Forge Road, Phoenixville, PA 19460. To modify an existing 5.6 acre reservoir by placing fill in a 3.2 acre portion, to deepen the remaining 2.4 acre portion, to enlarge the remaining reservoir by 2.0 acres, to place and maintain stormwater outfalls and to place fill in 0.16 acre of wetlands (PEM). The activities also include the extension of an existing enclosure by 29 feet and to construct stormwater outfall #95 which qualifies for a waiver of permit requirements in accordance with 105.12(a)(2). This permit also includes Environmental Assessment approval to modify a nonjurisdictional dam that will lower the

reservoir water surface elevation and impact 20 linear feet of stream at the outlet. This work is associated with the construction of the Lakeview Commercial Center located at the site of the former Lakeview Amusement Park approximately 1,200 feet northeast of the intersection of Lewis Road and Royersford Road (Phoenixville, PA Quadrangle N: 12.65 inches; W: 4.1 inches) in Limerick Township and Royersford Borough, **Montgomery County**. The project will impact a total of 5.6 acres of reservoir, 0.16 acre of wetlands and 80 linear feet of watercourse. The permittee is required to provide 0.9 acre of replacement wetlands.

E15-641. Encroachment Permit. **Brandywine Operating Partnership**, 14 Campus Boulevard, Suite 100, Newtown Square, PA 19073. To construct, operate and maintain the following Water Obstructions and Encroachments Activities associated with the Applebrook Corporate office facility:

1. To install a 101-foot long single span bridge over Ridley Creek (HQ-TSF) associated with construction of Drive A (West Chester, PA Quadrangle N: 21.1 inches; W: 5.5 inches);

2. Excavation of a reservoir area within and along a 164 linear-foot segment of an unnamed intermittent tributary of Ridley Creek (West Chester, PA Quadrangle N: 21.5 inches; W: 5.4 inches);

3. To construct Drive B across three unnamed tributaries of Ridley Creek, impacting 50, 78 and 70 linear feet of watercourse;

4. To place fill within and along 220, 255 and 360 linear feet of three unnamed tributaries of Ridley Creek and impacting 0.11 acre of adjacent wetlands for the construction of a parking area.

5. Issuance of this permit constitutes approval of the Environmental Assessment for an on-stream, non-jurisdictional dam impacting 210 linear feet of two unnamed tributaries of Ridley Creek. The facility will temporarily serve as sedimentation basin during construction and detention basin for post construction.

This project is situated approximately 800 feet northwest of the junction of Clock Tower Drive and East Boot Road (West Chester, PA—Quadrangle N: 21.8 inches; W: 5.4 inches) in East Goshen Township, **Chester County**.

The applicant proposes to construct 0.73 acre of replacement wetlands on the proposed Applebrook Golf Course site (DEP application E15-640) which is located immediately to the north of this project.

Northeast Regional Office, Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

E45-393. Encroachment. **White Heron Lake, Inc.**, P. O. Box 9, White Heron Lake, East Stroudsburg, PA 18301. To remove the existing wooden bridge deck and to construct and maintain an open grid steel deck on the existing beams of a private bridge having a single span of approximately 20 feet and underclearance of 6 feet across Marshall Creek. This project also includes maintenance of the deteriorated stone bridge abutments. This bridge serves as a secondary access to White Heron Lake residential development and is located east of S. R. 1007, approximately 0.25 mile downstream of Township Road T521 (East Stroudsburg, PA Quadrangle N: 10.1 inches; W: 1.7 inches) in Middle Smithfield Township, **Monroe County**.

E58-233. Encroachment. **Bart-Rich Enterprises, Inc.**, 1 Technology Place, East Syracuse, NY 13057. To place fill in 0.25 acre of wetlands to construct parking facilities for a proposed Burger King Restaurant, to construct and maintain a 6 inch sanitary sewer line across a tributary to the Susquehanna River, and to construct and maintain a stormwater outfall to a tributary to the Susquehanna River. This project is located at the intersection of S. R. 0171 and S. R. 0011 (Great Bend, PA/NY Quadrangle N: 16.7 inches; W: 15.6 inches), in Great Bend Township, **Susquehanna County**. The permittee is required to provide 0.25 acre of replacement wetlands.

E58-236. Encroachment. **Pennsylvania Department of Transportation, District 4-0**, P. O. Box 111, Scranton, PA 18501. To remove the existing structure and to construct and maintain a single span, fiber reinforced, polymer bridge having a normal clear span of 18.0 feet on a 70° skew with a minimum underclearance of 4.67 feet across a tributary to DuBois Creek. The project is located along S. R. 1037 approximately 100 feet south of the intersection of S. R. 1037 and S. R. 1022, (Franklin Forks, PA Quadrangle N: 12.7 inches; W: 2.5 inches) in Great Bend Township, **Susquehanna County**.

Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.

E06-540. Encroachment. **David Hoffman**, 704 Buck Hollow Road, Mohnnton, PA 19540. To relocate an existing bridge for small equipment having a span of 50 feet and an underclearance of 12 feet approximately 800 feet downstream from its existing location across Beaver Run at a point approximately 1,200 feet upstream of Zion Road (Morgantown, PA Quadrangle N: 17.5 inches; W: 0.8 inch) in Robeson Township, **Berks County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E07-322. Encroachment. **Leonard S. Fiore, Inc.**, 5506 Sixth Avenue, Rear, Altoona, PA 16602. To place fill in 0.4 acre of wetlands for roadway construction and to construct and maintain two 8-inch diameter sanitary sewer line wetland crossings in conjunction with the development of the Fox Hollow (Phase 4) residential subdivision along Brush Run (WWF) located between Route 36 and Logan Boulevard about 1.3 miles northwest of Hollidaysburg (Hollidaysburg, PA Quadrangle N: 13.0 inches; W: 3.5 inches) in Allegheny Township, **Blair County**. This permit also includes 401 Water Quality Certification.

E36-696. Encroachment. **Virginia Brady**, Pequea Township, 1020 Millwood Road, Willow Street, PA 17584. To remove the existing bridge and to construct and maintain a new concrete bridge having a single span of 20 feet with an underclearance of 8 feet minimum across the channel of Goods Run (TSF) on T-557 (Millwood Road) located about 0.7 mile south of Baumgardner Village (Conestoga, PA Quadrangle N: 13.8 inches; W: 5.0 inches) in Pequea Township, **Lancaster County**. This permit also includes 401 Water Quality Certification.

Northcentral Region: Water Management—Soils and Waterways, F. Alan Sever, Chief, 208 West Third St., Williamsport, PA 17701.

E41-467. Encroachment. **Glen L. Powell**, 160 Powell Road, Butler, PA 16002-8890. To 1) remove sunken and submerged old growth timber logs, not including the log cribs or piles of logs, from the West Branch Susquehanna

River bed from a point 300 feet upstream of the Hepburn Street Dam to Crane Island, which is approximately 12 miles upstream from the dam, 2) place fish habitat root wads in the general area where old growth logs were removed (Williamsport, PA Quadrangle, from N: 19.6 inches; W: 0.9 inch to Linden, PA Quadrangle N: 13.7 inches; W: 9.9 inches) in the City of Williamsport, Loyalsock Township, South Williamsport Borough, Duboisstown Borough, Armstrong Township, Susquehanna Township, and Woodward Township, Nippenose Township, Piatt Township, **Lycoming County**. This permit was issued under section 105.13(e) "Small Projects."

E59-406. Encroachment. **Richmond Township**, 563 Valley Road, Mansfield, PA 16933. To remove the existing structures and construct, operate and maintain three new culvert structures located on Township Route T-754. The first structure consists of installing a 2440 mm (8 foot) corrugated steel pipe culvert (Mansfield, PA Quadrangle N: 8.6 inches, W: 11 inches), the second structure consists of installing a 2108 mm x 1448 mm (6.92 ft X 4.75 ft) corrugated steel pipe arch culvert (Mansfield, PA Quadrangle N: 8.7 inches; W: 11 inches). Both of these structures will be installed on unnamed tributaries to the Tioga River. The third structure consists of a 5790 mm x 1850 mm (19 ft x 6.2 ft) aluminum box culvert with concrete invert over Slate Creek (Mansfield, PA Quadrangle N: 6.5 inches; W: 10.25 inches). This culvert (number 3) shall be depressed 12 inches and fish baffles shall be incorporated in the construction. This permit also authorizes the temporary installation of a diversion dike for the Slate Run crossing which upon completion of the project shall be completely removed and the area restored and stabilized. All three of these structures are in Richmond Township, **Tioga County**.

Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E32-423. Encroachment. **Indiana County Commissioners**, 825 Philadelphia Street, Indiana, PA 15701-3942. To remove the existing structure known as Josephine Bridge No. 61B, and to construct and maintain a dual span bridge having a clear span of 19.71 meters each and an underclearance of 6.1 meters across Blacklick Creek (TSF). The project includes construction and maintenance of scour protection. Also, to construct and maintain a temporary causeway and cofferdam during construction. The structure is located on T-660 at a point approximately 0.35 mile north of the intersection of T-660 and S.R. 2017 (Bolivar, PA Quadrangle N: 18.55 inches; W: 8.7 inches) in Burrell Township, **Indiana County**.

E65-763. Encroachment. **St. Clair Township**, P. O. Box 506, Seward, PA 15954. To remove the existing structure and to construct and maintain a 6-inch depressed 64-inch x 43-inch corrugated metal pipe arch culvert in Shannon Run (HQ-CWF) for the purpose of minimizing flooding. The project is located on Wildcat Road, approximately 1 mile from its intersection with Shannon Creek Road (Rachelwood, PA Quadrangle N: 17.0 inches; W: 9.0 inches) in St. Clair Township, **Westmoreland County**. This permit was issued under section 105.13(e) "small projects." This permit also includes 401 Water Quality Certification.

ENVIRONMENTAL ASSESSMENT

Environmental Assessment Approval and Actions on 401 Certification

Central Office: Bureau of Waterways Engineering, 400 Market Street, 3rd Floor, P. O. Box 8554, Harrisburg, PA 17105-8554, (717) 787-8568.

D21-152EA. Environmental Assessment. **Dickinson Township** (219 Mountain View Road, Mount Holly Springs, PA 17065). To breach and remove the Barnitz Mill Dam across Yellow Breeches Creek (HQ-CWF) for the purpose of restoring the stream to a free flowing condition. The dam is located approximately 500 feet southwest of the intersection of the Pine Road (S.R. 3006) and T471 (Mount Holly Springs, PA Quadrangle N: 22.4 inches; W: 13.5 inches) Dickinson Township, **Cumberland County**.

SPECIAL NOTICES

Submission Date for Grant Applications under the Pennsylvania Solid Waste-Resource Recovery Development Act

The Department of Environmental Protection (Department) announces that it is accepting Resource Recovery Demonstration Grant applications from counties, municipalities, and municipal authorities within Pennsylvania under the Pennsylvania Solid Waste-Resource Recovery Development Act of 1974, Act 198. Projects must be capable of demonstrating, for a minimum of 2 years, the production of energy or the recovery of materials from solid waste (except sewage sludge). Grant applications must meet the terms and conditions established in Chapter 76 of the Department's Regulations adopted under Act 198.

Priority in selecting successful applicants during this application solicitation will be given to unique and innovative resource recovery projects not previously demonstrated or currently being demonstrated in Pennsylvania. Priority in selecting successful applicants during this application solicitation will also be given to unique and innovative resource recovery demonstration projects involving regional cooperative projects involving more than one county or municipality. Other types of resource recovery projects may also be considered. All projects must be capable of being replicated in other areas of Pennsylvania.

All applicants must provide a business plan and market commitments for energy or materials produced by the demonstration project. All projects should be capable of reaching full scale production within 12 months of notice of a grant award.

A lead municipality or county serving as the development agency for regional projects must have resolutions from other participating counties or municipalities in support of the project. Counties and municipalities may sponsor cooperative projects with private sector entities provided that a minimum of 5% equity in the project is maintained by the development agency for the term of the demonstration period.

The deadline for submission of grant applications is 3 p.m. March 22, 2001. Applications must be on forms provided by the Department. Applications received by the Department or post marked after the deadline will not be considered during this application solicitation.

Counties and municipalities must contact the appropriate DEP Planning and Recycling Coordinator listed below to obtain a grant application. A pre-application conference with the DEP Regional Planning and Recycling Coordinator is required. Inquiries concerning this notice should be

directed to Carl Hursh, Chief, Waste Reduction and Recycling, Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Waste Minimization and Planning, Rachel Carson State Office Building, P. O. Box 8472, Harrisburg, PA 17105-8472.

[Pa.B. Doc. No. 00-2221. Filed for public inspection December 22, 2000, 9:00 a.m.]

Proposed Draft Great Lakes Annex 2001; Public Information Meeting

The Department of Environmental Protection (Department) will be conducting a public information meeting on the Draft Annex 2001, a proposed amendment to the Great Lakes Charter of 1985, on January 16, 2001, from 7 to 8:30 p.m., at the Erie County Courthouse, 140 West Sixth Street, Courtroom H, Erie, PA.

The proposed draft Annex 2001 is an amendment to the Great Lakes Charter of 1985. The Great Lakes Charter of 1985 is a nonbinding agreement signed by the Governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and the Premiers of Ontario and Quebec. The proposed draft Annex 2001 would forge a new binding agreement to: manage the Great Lakes waters; create a new standard requiring an improvement to the water and water dependent natural resources of the Great Lakes before allowing new water uses; implement the new standard for interim decisions under the United States Water Resources Development Act (WRDA) of 1986; include the Premiers in reviewing and consulting on all new proposed diversions and exports subject to WRDA; and obtain better information for the better management of Great Lakes waters.

Comments on the Annex 2001 should be submitted to by February 16, 2001 to:

Irene B. Brooks
Executive Director
Office for River Basin Cooperation
Department of Environmental Protection
Box 2063
400 Market Street
Harrisburg, PA 17105-2063

or

Jeff Edstrom
Senior Policy Director
Council of Great Lakes Governors
35 East Wacker Drive
Suite 1850
Chicago, IL 60601

Copies of the draft Annex 2001 can be obtained contacting the Office for River Basin Cooperation at (717) 772-4785 or email hines.john@dep.state.pa.us or visit the Department's website at www.dep.state.pa.us (direct link: Annex 2001).

JAMES M. SEIF,
Secretary

[Pa.B. Doc. No. 00-2222. Filed for public inspection December 22, 2000, 9:00 a.m.]

DEPARTMENT OF HEALTH

Human Immunodeficiency Virus (HIV) Community Prevention Planning Committee; Public Meetings

The Statewide HIV Community Prevention Planning Committee, established by the Department of Health under sections 301 and 317 of the Public Health Service Act (42 U.S.C.A. §§ 241(a) and 247b), will hold a public meeting on Wednesday, January 17, 2001.

The meeting will be held at the Best Western Inn and Suites, 815 Eisenhower Boulevard, Middletown, PA 17057, from 9 a.m. to 3 p.m.

For additional information please contact Thomas M. DeMelfi, Department of Health, Bureau of Communicable Diseases, P. O. Box 90, Room 912 Health and Welfare Building, Harrisburg, PA 17108, (717) 783-0574.

Persons with a disability who desire to attend the meeting and require an auxiliary aid service or other accommodation to do so should also contact Thomas DeMelfi at the above number or at V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Services at (800) 654-5984[TT].

ROBERT S. ZIMMERMAN, Jr.,
Secretary

[Pa.B. Doc. No. 00-2223. Filed for public inspection December 22, 2000, 9:00 a.m.]

Notice of Requests for Exceptions for Long-term Care Nursing Facilities

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

Liberty Court, Genesis Eldercare Network
1526 Lombard Street
Philadelphia, PA 19146

Wesbury United Methodist Community
31 North Park Avenue, Extended
Meadville, PA 16335

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.36(e) (relating to Bathing facilities):

Meadow View Senior Living Center
RR 4 Box 4000
Montrose, PA 18801

The requests are on file with the Department. Persons may receive a copy of the request for exception by requesting a copy from:

Division of Nursing Care Facilities
Room 526, Health and Welfare Building
Harrisburg, PA 17120
(717) 787-1816
Fax: (717) 772-2163

E-Mail Address: PAEXCEPT@STATE.PA.US

Those persons who wish to comment on these exceptions request may do so by sending a letter by mail, e-mail, or facsimile to the division and address listed above.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed.

by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact V/TT: (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

ROBERT S. ZIMMERMAN, Jr.,
Secretary

[Pa.B. Doc. No. 00-2224. Filed for public inspection December 22, 2000, 9:00 a.m.]

Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program)

Notice of change in store slot allocations by county and of an increase in the maximum allowable cost of WIC Food Prescription Two.

I. Allocation of Store Slots

Under 28 Pa. Code § 1103.3(b), the WIC Program hereby publishes notice of the store slot allocations by county as listed below. The information contained herein is effective immediately upon this publication.

<i>County</i>	<i>New Slot Allocation</i>	<i>County</i>	<i>New Slot Allocation</i>
Adams	14	Lackawanna	44
Allegheny	131	Lancaster	58
Armstrong	17	Lawrence	17
Beaver	27	Lebanon	14
Bedford	8	Lehigh	51
Berks	50	Luzerne	50
Blair	31	Lycoming	24
Bradford	17	Mckean	11
Bucks	42	Mercer	23
Butler	23	Mifflin	12
Cambria	30	Monroe	22
Cameron	2	Montgomery	45
Carbon	8	Montour	2
Centre	22	Northampton	30
Chester	32	Northumberland	12
Clarion	9	Perry	4
Clearfield	18	Philadelphia	269
Clinton	9	Pike	5
Columbia	11	Potter	5
Crawford	17	Schuylkill	22
Cumberland	14	Snyder	4
Dauphin	41	Somerset	17
Delaware	52	Sullivan	2
Elk	6	Susquehanna	9
Erie	58	Tioga	11
Fayette	32	Union	8
Forest	1	Venango	13
Franklin	24	Warren	8
Fulton	3	Washington	31
Greene	10	Wayne	9
Huntingdon	10	Westmoreland	53

<i>County</i>	<i>New Slot Allocation</i>	<i>County</i>	<i>New Slot Allocation</i>
Indiana	16	Wyoming	7
Jefferson	10	York	39
Juniata	4		

II. Maximum Allowable Cost for WIC Food Prescription Two

Under 28 Pa. Code § 1103.4(a)(6)(ii), due to an increase in the number of infant formula cans for WIC Food Prescription Two from 24 to 31, the WIC Program hereby publishes notice of the maximum allowable cost of WIC Food Prescription Two. The information contained herein is effective immediately upon publication.

The maximum allowable cost for WIC Food Prescription Two is \$131.44.

Persons with a disability who wish to obtain a copy of this notice and require an auxiliary aide service or other accommodation to do so, should contact Greg Landis at (717) 783-1289, V/TT: (717) 783-6514 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

ROBERT S. ZIMMERMAN, Jr.,
Secretary

[Pa.B. Doc. No. 00-2225. Filed for public inspection December 22, 2000, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

Unemployment Compensation Benefit Rate Table

The purpose of this notice is to effect the automatic extension of the Unemployment Compensation Benefit Rate Table. Each year the maximum weekly benefit rate is calculated as 66-2/3% of the average weekly wage in covered employment for the preceding fiscal year. The maximum weekly benefit rate for unemployment compensation purposes in this Commonwealth during calendar year 2001 will be \$430.

Under the authority contained in sections 201 and 404(e)(2) of the Unemployment Compensation Law (43 P. S. §§ 761 and 804(e)(2)) and 34 Pa. Code § 65.111, the table for 2001 is being adopted by this notice and will be codified in 34 Pa. Code Chapter 65, Appendix A. See 14 Pa.B. 4688 (December 29, 1984).

The deadline for conformity is January 1, 2001, as established by section 404(e)(2) of the Unemployment Compensation Law.

Any questions concerning this notice should be directed to Alan Williamson, Deputy Secretary for Unemployment Compensation Programs, Labor and Industry Building, Harrisburg, PA 17120.

JOHNNY J. BUTLER,
Secretary

Table Specified for the Determination of Rate and Amount of UC Benefits

	<i>Part A Highest Quarterly Wage</i>		<i>Part B Rate of Compensation</i>		<i>Part C Qualifying Wages</i>		<i>Part D Amount of Compensation</i>		<i>Part E</i>
\$ 800 -	\$ 812	\$ 35	\$ 1,320	\$ 910	\$ 560				
813 -	837	36	1,360	936	576				
838 -	862	37	1,400	962	592				
863 -	887	38	1,440	988	608				
888 -	912	39	1,480	1,014	624				
913 -	937	40	1,520	1,040	640				
938 -	962	41	1,560	1,066	656				
963 -	987	42	1,600	1,092	672				
988 -	1,012	43	1,640	1,118	688				
1,013 -	1,037	44	1,680	1,144	704				
1,038 -	1,062	45	1,720	1,170	720				
1,063 -	1,087	46	1,760	1,196	736				
1,088 -	1,112	47	1,800	1,222	752				
1,113 -	1,162	48	1,840	1,248	768				
1,163 -	1,187	49	1,880	1,274	784				
1,188 -	1,212	50	1,920	1,300	800				
1,213 -	1,237	51	1,960	1,326	816				
1,238 -	1,262	52	2,000	1,352	832				
1,263 -	1,287	53	2,040	1,378	848				
1,288 -	1,312	54	2,080	1,404	864				
1,313 -	1,337	55	2,120	1,430	880				
1,338 -	1,362	56	2,160	1,456	896				
1,363 -	1,387	57	2,200	1,482	912				
1,388 -	1,412	58	2,240	1,508	928				
1,413 -	1,437	59	2,280	1,534	944				
1,438 -	1,462	60	2,320	1,560	960				
1,463 -	1,487	61	2,360	1,586	976				
1,488 -	1,512	62	2,400	1,612	992				
1,513 -	1,537	63	2,440	1,638	1,008				
1,538 -	1,562	64	2,480	1,664	1,024				
1,563 -	1,587	65	2,520	1,690	1,040				
1,588 -	1,612	66	2,560	1,716	1,056				
1,613 -	1,637	67	2,600	1,742	1,072				
1,638 -	1,662	68	2,640	1,768	1,088				
1,663 -	1,687	69	2,680	1,794	1,104				
1,688 -	1,712	70	2,720	1,820	1,120				
1,713 -	1,737	71	2,760	1,846	1,136				
1,738 -	1,762	72	2,800	1,872	1,152				
1,763 -	1,787	73	2,840	1,898	1,168				
1,788 -	1,812	74	2,880	1,924	1,184				
1,813 -	1,837	75	2,920	1,950	1,200				
1,838 -	1,862	76	2,960	1,976	1,216				
1,863 -	1,887	77	3,000	2,002	1,232				
1,888 -	1,912	78	3,040	2,028	1,248				
1,913 -	1,937	79	3,080	2,054	1,264				
1,938 -	1,962	80	3,120	2,080	1,280				
1,963 -	1,987	81	3,160	2,106	1,296				
1,988 -	2,012	82	3,200	2,132	1,312				
2,013 -	2,037	83	3,240	2,158	1,328				
2,038 -	2,062	84	3,280	2,184	1,344				
2,063 -	2,087	85	3,320	2,210	1,360				
2,088 -	2,112	86	3,360	2,236	1,376				
2,113 -	2,137	87	3,400	2,262	1,392				
2,138 -	2,162	88	3,440	2,288	1,408				

<i>Part A Highest Quarterly Wage</i>	<i>Part B Rate of Compensation</i>	<i>Part C Qualifying Wages</i>	<i>Part D Amount of Compensation</i>	<i>Part E</i>	
2,163 -	2,187	89	3,480	2,314	1,424
2,188 -	2,212	90	3,520	2,340	1,440
2,213 -	2,237	91	3,560	2,366	1,456
2,238 -	2,262	92	3,600	2,392	1,472
2,263 -	2,287	93	3,640	2,418	1,488
2,288 -	2,312	94	3,680	2,444	1,504
2,313 -	2,337	95	3,720	2,470	1,520
2,338 -	2,362	96	3,760	2,496	1,536
2,363 -	2,387	97	3,800	2,522	1,552
2,388 -	2,412	98	3,840	2,548	1,568
2,413 -	2,437	99	3,880	2,574	1,584
2,438 -	2,462	100	3,920	2,600	1,600
2,463 -	2,487	101	3,960	2,626	1,616
2,488 -	2,512	102	4,000	2,652	1,632
2,513 -	2,537	103	4,040	2,678	1,648
2,538 -	2,562	104	4,080	2,704	1,664
2,563 -	2,587	105	4,120	2,730	1,680
2,588 -	2,612	106	4,160	2,756	1,696
2,613 -	2,637	107	4,200	2,782	1,712
2,638 -	2,662	108	4,240	2,808	1,728
2,663 -	2,687	109	4,280	2,834	1,744
2,688 -	2,712	110	4,320	2,860	1,760
2,713 -	2,737	111	4,360	2,886	1,776
2,738 -	2,762	112	4,400	2,912	1,792
2,763 -	2,787	113	4,440	2,938	1,808
2,788 -	2,812	114	4,480	2,964	1,824
2,813 -	2,837	115	4,520	2,990	1,840
2,838 -	2,862	116	4,560	3,016	1,856
2,863 -	2,887	117	4,600	3,042	1,872
2,888 -	2,912	118	4,640	3,068	1,888
2,913 -	2,937	119	4,680	3,094	1,904
2,938 -	2,962	120	4,720	3,120	1,920
2,963 -	2,987	121	4,760	3,146	1,936
2,988 -	3,012	122	4,800	3,172	1,952
3,013 -	3,037	123	4,840	3,198	1,968
3,038 -	3,062	124	4,880	3,224	1,984
3,063 -	3,087	125	4,920	3,250	2,000
3,088 -	3,112	126	4,960	3,276	2,016
3,113 -	3,137	127	5,000	3,302	2,032
3,138 -	3,162	128	5,040	3,328	2,048
3,163 -	3,187	129	5,080	3,354	2,064
3,188 -	3,212	130	5,120	3,380	2,080
3,213 -	3,237	131	5,160	3,406	2,096
3,238 -	3,262	132	5,200	3,432	2,112
3,263 -	3,287	133	5,240	3,458	2,128
3,288 -	3,312	134	5,280	3,484	2,144
3,313 -	3,337	135	5,320	3,510	2,160
3,338 -	3,362	136	5,360	3,536	2,176
3,363 -	3,387	137	5,400	3,562	2,192
3,388 -	3,412	138	5,440	3,588	2,208
3,413 -	3,437	139	5,480	3,614	2,224
3,438 -	3,462	140	5,520	3,640	2,240
3,463 -	3,487	141	5,560	3,666	2,256
3,488 -	3,512	142	5,600	3,692	2,272

<i>Part A Highest Quarterly Wage</i>	<i>Part B Rate of Compensation</i>	<i>Part C Qualifying Wages</i>	<i>Part D Amount of Compensation</i>	<i>Part E</i>
3,513 -	3,537	143	3,718	2,288
3,538 -	3,562	144	3,744	2,304
3,563 -	3,587	145	3,770	2,320
3,588 -	3,612	146	3,796	2,336
3,613 -	3,637	147	3,822	2,352
3,638 -	3,662	148	3,848	2,368
3,663 -	3,687	149	3,874	2,384
3,688 -	3,712	150	3,900	2,400
3,713 -	3,737	151	3,926	2,416
3,738 -	3,762	152	3,952	2,432
3,763 -	3,787	153	3,978	2,448
3,788 -	3,812	154	4,004	2,464
3,813 -	3,837	155	4,030	2,480
3,838 -	3,862	156	4,056	2,496
3,863 -	3,887	157	4,082	2,512
3,888 -	3,912	158	4,108	2,528
3,913 -	3,937	159	4,134	2,544
3,938 -	3,962	160	4,160	2,560
3,963 -	3,987	161	4,186	2,576
3,988 -	4,012	162	4,212	2,592
4,013 -	4,037	163	4,238	2,608
4,038 -	4,062	164	4,264	2,624
4,063 -	4,087	165	4,290	2,640
4,088 -	4,112	166	4,316	2,656
4,113 -	4,137	167	4,342	2,672
4,138 -	4,162	168	4,368	2,688
4,163 -	4,187	169	4,394	2,704
4,188 -	4,212	170	4,420	2,720
4,213 -	4,237	171	4,446	2,736
4,238 -	4,262	172	4,472	2,752
4,263 -	4,287	173	4,498	2,768
4,288 -	4,312	174	4,524	2,784
4,313 -	4,337	175	4,550	2,800
4,338 -	4,362	176	4,576	2,816
4,363 -	4,387	177	4,602	2,832
4,388 -	4,412	178	4,628	2,848
4,413 -	4,437	179	4,654	2,864
4,438 -	4,462	180	4,680	2,880
4,463 -	4,487	181	4,706	2,896
4,488 -	4,512	182	4,732	2,912
4,513 -	4,537	183	4,758	2,928
4,538 -	4,562	184	4,784	2,944
4,563 -	4,587	185	4,810	2,960
4,588 -	4,612	186	4,836	2,976
4,613 -	4,637	187	4,862	2,992
4,638 -	4,662	188	4,888	3,008
4,663 -	4,687	189	4,914	3,024
4,688 -	4,712	190	4,940	3,040
4,713 -	4,737	191	4,966	3,056
4,738 -	4,762	192	4,992	3,072
4,763 -	4,787	193	5,018	3,088
4,788 -	4,812	194	5,044	3,104
4,813 -	4,837	195	5,070	3,120
4,838 -	4,862	196	5,096	3,136

<i>Part A Highest Quarterly Wage</i>	<i>Part B Rate of Compensation</i>	<i>Part C Qualifying Wages</i>	<i>Part D Amount of Compensation</i>	<i>Part E</i>
4,863 -	4,887	197	5,122	3,152
4,888 -	4,912	198	5,148	3,168
4,913 -	4,937	199	5,174	3,184
4,938 -	4,962	200	5,200	3,200
4,963 -	4,987	201	5,226	3,216
4,988 -	5,012	202	5,252	3,232
5,013 -	5,037	203	5,278	3,248
5,038 -	5,062	204	5,304	3,264
5,063 -	5,087	205	5,330	3,280
5,088 -	5,112	206	5,356	3,296
5,113 -	5,137	207	5,382	3,312
5,138 -	5,162	208	5,408	3,328
5,163 -	5,187	209	5,434	3,344
5,188 -	5,212	210	5,460	3,360
5,213 -	5,237	211	5,486	3,376
5,238 -	5,262	212	5,512	3,392
5,263 -	5,287	213	5,538	3,408
5,288 -	5,312	214	5,564	3,424
5,313 -	5,337	215	5,590	3,440
5,338 -	5,362	216	5,616	3,456
5,363 -	5,387	217	5,642	3,472
5,388 -	5,412	218	5,668	3,488
5,413 -	5,437	219	5,694	3,504
5,438 -	5,462	220	5,720	3,520
5,463 -	5,487	221	5,746	3,536
5,488 -	5,512	222	5,772	3,552
5,513 -	5,537	223	5,798	3,568
5,538 -	5,562	224	5,824	3,584
5,563 -	5,587	225	5,850	3,600
5,588 -	5,612	226	5,876	3,616
5,613 -	5,637	227	5,902	3,632
5,638 -	5,662	228	5,928	3,648
5,663 -	5,687	229	5,954	3,664
5,688 -	5,712	230	5,980	3,680
5,713 -	5,737	231	6,006	3,696
5,738 -	5,762	232	6,032	3,712
5,763 -	5,787	233	6,058	3,728
5,788 -	5,812	234	6,084	3,744
5,813 -	5,837	235	6,110	3,760
5,838 -	5,862	236	6,136	3,776
5,863 -	5,887	237	6,162	3,792
5,888 -	5,912	238	6,188	3,808
5,913 -	5,937	239	6,214	3,824
5,938 -	5,962	240	6,240	3,840
5,963 -	5,987	241	6,266	3,856
5,988 -	6,012	242	6,292	3,872
6,013 -	6,037	243	6,318	3,888
6,038 -	6,062	244	6,344	3,904
6,063 -	6,087	245	6,370	3,920
6,088 -	6,112	246	6,396	3,936
6,113 -	6,137	247	6,422	3,952
6,138 -	6,162	248	6,448	3,968
6,163 -	6,187	249	6,474	3,984

<i>Part A Highest Quarterly Wage</i>		<i>Part B Rate of Compensation</i>	<i>Part C Qualifying Wages</i>	<i>Part D Amount of Compensation</i>	<i>Part E</i>
6,188 -	6,212	250	9,920	6,500	4,000
6,213 -	6,237	251	9,960	6,526	4,016
6,238 -	6,262	252	10,000	6,552	4,032
6,263 -	6,287	253	10,040	6,578	4,048
6,288 -	6,312	254	10,080	6,604	4,064
6,313 -	6,337	255	10,120	6,630	4,080
6,338 -	6,362	256	10,160	6,656	4,096
6,363 -	6,387	257	10,200	6,682	4,112
6,388 -	6,412	258	10,240	6,708	4,128
6,413 -	6,437	259	10,280	6,734	4,144
6,438 -	6,462	260	10,320	6,760	4,160
6,463 -	6,487	261	10,360	6,786	4,176
6,488 -	6,512	262	10,400	6,812	4,192
6,513 -	6,537	263	10,440	6,838	4,208
6,538 -	6,562	264	10,480	6,864	4,224
6,563 -	6,587	265	10,520	6,890	4,240
6,588 -	6,612	266	10,560	6,916	4,256
6,613 -	6,637	267	10,600	6,942	4,272
6,638 -	6,662	268	10,640	6,968	4,288
6,663 -	6,687	269	10,680	6,994	4,304
6,688 -	6,712	270	10,720	7,020	4,320
6,713 -	6,737	271	10,760	7,046	4,336
6,738 -	6,762	272	10,800	7,072	4,352
6,763 -	6,787	273	10,840	7,098	4,368
6,788 -	6,812	274	10,880	7,124	4,384
6,813 -	6,837	275	10,920	7,150	4,400
6,838 -	6,862	276	10,960	7,176	4,416
6,863 -	6,887	277	11,000	7,202	4,432
6,888 -	6,912	278	11,040	7,228	4,448
6,913 -	6,937	279	11,080	7,254	4,464
6,938 -	6,962	280	11,120	7,280	4,480
6,963 -	6,987	281	11,160	7,306	4,496
6,988 -	7,012	282	11,200	7,332	4,512
7,013 -	7,037	283	11,240	7,358	4,528
7,038 -	7,062	284	11,280	7,384	4,544
7,063 -	7,087	285	11,320	7,410	4,560
7,088 -	7,112	286	11,360	7,436	4,576
7,113 -	7,137	287	11,400	7,462	4,592
7,138 -	7,162	288	11,440	7,488	4,608
7,163 -	7,187	289	11,480	7,514	4,624
7,188 -	7,212	290	11,520	7,540	4,640
7,213 -	7,237	291	11,560	7,566	4,656
7,238 -	7,262	292	11,600	7,592	4,672
7,263 -	7,287	293	11,640	7,618	4,688
7,288 -	7,312	294	11,680	7,644	4,704
7,313 -	7,337	295	11,720	7,670	4,720
7,338 -	7,362	296	11,760	7,696	4,736
7,363 -	7,387	297	11,800	7,722	4,752
7,388 -	7,412	298	11,840	7,748	4,768
7,413 -	7,437	299	11,880	7,774	4,784
7,438 -	7,462	300	11,920	7,800	4,800
7,463 -	7,487	301	11,960	7,826	4,816

<i>Part A Highest Quarterly Wage</i>	<i>Part B Rate of Compensation</i>	<i>Part C Qualifying Wages</i>	<i>Part D Amount of Compensation</i>	<i>Part E</i>
7,488 -	7,512	302	7,852	4,832
7,513 -	7,537	303	7,878	4,848
7,538 -	7,562	304	7,904	4,864
7,563 -	7,587	305	7,930	4,880
7,588 -	7,612	306	7,956	4,896
7,613 -	7,637	307	7,982	4,912
7,638 -	7,662	308	8,008	4,928
7,663 -	7,687	309	8,034	4,944
7,688 -	7,712	310	8,060	4,960
7,713 -	7,737	311	8,086	4,976
7,738 -	7,762	312	8,112	4,992
7,763 -	7,787	313	8,138	5,008
7,788 -	7,812	314	8,164	5,024
7,813 -	7,837	315	8,190	5,040
7,838 -	7,862	316	8,216	5,056
7,863 -	7,887	317	8,242	5,072
7,888 -	7,912	318	8,268	5,088
7,913 -	7,937	319	8,294	5,104
7,938 -	7,962	320	8,320	5,120
7,963 -	7,987	321	8,346	5,136
7,988 -	8,012	322	8,372	5,152
8,013 -	8,037	323	8,398	5,168
8,038 -	8,062	324	8,424	5,184
8,063 -	8,087	325	8,450	5,200
8,088 -	8,112	326	8,476	5,216
8,113 -	8,137	327	8,502	5,232
8,138 -	8,162	328	8,528	5,248
8,163 -	8,187	329	8,554	5,264
8,188 -	8,212	330	8,580	5,280
8,213 -	8,237	331	8,606	5,296
8,238 -	8,262	332	8,632	5,312
8,263 -	8,287	333	8,658	5,328
8,288 -	8,312	334	8,684	5,344
8,313 -	8,337	335	8,710	5,360
8,338 -	8,362	336	8,736	5,376
8,363 -	8,387	337	8,762	5,392
8,388 -	8,412	338	8,788	5,408
8,413 -	8,437	339	8,814	5,424
8,438 -	8,462	340	8,840	5,440
8,463 -	8,487	341	8,866	5,456
8,488 -	8,512	342	8,892	5,472
8,513 -	8,537	343	8,918	5,488
8,538 -	8,562	344	8,944	5,504
8,563 -	8,587	345	8,970	5,520
8,588 -	8,612	346	8,996	5,536
8,613 -	8,637	347	9,022	5,552
8,638 -	8,662	348	9,048	5,568
8,663 -	8,687	349	9,074	5,584
8,688 -	8,712	350	9,100	5,600
8,713 -	8,737	351	9,126	5,616
8,738 -	8,762	352	9,152	5,632
8,763 -	8,787	353	9,178	5,648
8,788 -	8,812	354	9,204	5,664

	<i>Part A Highest Quarterly Wage</i>	<i>Part B Rate of Compensation</i>	<i>Part C Qualifying Wages</i>	<i>Part D Amount of Compensation</i>	<i>Part E</i>
8,813 -	8,837	355	14,120	9,230	5,680
8,838 -	8,862	356	14,160	9,256	5,696
8,863 -	8,887	357	14,200	9,282	5,712
8,888 -	8,912	358	14,240	9,308	5,728
8,913 -	8,937	359	14,280	9,334	5,744
8,938 -	8,962	360	14,320	9,360	5,760
8,963 -	8,987	361	14,360	9,386	5,776
8,988 -	9,012	362	14,400	9,412	5,792
9,013 -	9,037	363	14,440	9,438	5,808
9,038 -	9,062	364	14,480	9,464	5,824
9,063 -	9,087	365	14,520	9,490	5,840
9,088 -	9,112	366	14,560	9,516	5,856
9,113 -	9,137	367	14,600	9,542	5,872
9,138 -	9,162	368	14,640	9,568	5,888
9,163 -	9,187	369	14,680	9,594	5,904
9,188 -	9,212	370	14,720	9,620	5,920
9,213 -	9,237	371	14,760	9,646	5,936
9,238 -	9,262	372	14,800	9,672	5,952
9,263 -	9,287	373	14,840	9,698	5,968
9,288 -	9,312	374	14,880	9,724	5,984
9,313 -	9,337	375	14,920	9,750	6,000
9,338 -	9,362	376	14,960	9,776	6,016
9,363 -	9,387	377	15,000	9,802	6,032
9,388 -	9,412	378	15,040	9,828	6,048
9,413 -	9,437	379	15,080	9,854	6,064
9,438 -	9,462	380	15,120	9,880	6,080
9,463 -	9,487	381	15,160	9,906	6,096
9,488 -	9,512	382	15,200	9,932	6,112
9,513 -	9,537	383	15,240	9,958	6,128
9,538 -	9,562	384	15,280	9,984	6,144
9,563 -	9,587	385	15,320	10,010	6,160
9,588 -	9,612	386	15,360	10,036	6,176
9,613 -	9,637	387	15,400	10,062	6,192
9,638 -	9,662	388	15,440	10,088	6,208
9,663 -	9,687	389	15,480	10,114	6,224
9,688 -	9,712	390	15,520	10,140	6,240
9,713 -	9,737	391	15,560	10,166	6,256
9,738 -	9,762	392	15,600	10,192	6,272
9,763 -	9,787	393	15,640	10,218	6,288
9,788 -	9,812	394	15,680	10,244	6,304
9,813 -	9,837	395	15,720	10,270	6,320
9,838 -	9,862	396	15,760	10,296	6,336
9,863 -	9,887	397	15,800	10,322	6,352
9,888 -	9,912	398	15,840	10,348	6,368
9,913 -	9,937	399	15,880	10,374	6,384
9,938 -	9,962	400	15,920	10,400	6,400
9,963 -	9,987	401	15,960	10,426	6,416
9,988 -	10,012	402	16,000	10,452	6,432
10,013 -	10,037	403	16,040	10,478	6,448
10,038 -	10,062	404	16,080	10,504	6,464

<i>Part A Highest Quarterly Wage</i>		<i>Part B Rate of Compensation</i>	<i>Part C Qualifying Wages</i>	<i>Part D Amount of Compensation</i>	<i>Part E</i>
10,063 -	10,087	405	16,120	10,530	6,480
10,088 -	10,112	406	16,160	10,556	6,496
10,113 -	10,137	407	16,200	10,582	6,512
10,138 - [or more]-10,162	10,162	408	[*] 16,240	10,608	6,528
10,163 -	10,187	409	16,280	10,634	6,544
<hr/>					
10,188 -	10,212	410	16,320	10,660	6,560
10,213 -	10,237	411	16,360	10,686	6,576
10,238 -	10,262	412	16,400	10,712	6,592
10,263 -	10,287	413	16,440	10,738	6,608
10,288 -	10,312	414	16,480	10,764	6,624
<hr/>					
10,313 -	10,337	415	16,520	10,790	6,640
10,338 -	10,362	416	16,560	10,816	6,656
10,363 -	10,387	417	16,600	10,842	6,672
10,388 -	10,412	418	16,640	10,868	6,688
10,413 -	10,437	419	16,680	10,894	6,704
<hr/>					
10,438 -	10,462	420	16,720	10,920	6,720
10,463 -	10,487	421	16,760	10,946	6,736
10,488 -	10,512	422	16,800	10,972	6,752
10,513 -	10,537	423	16,840	10,998	6,768
10,538 -	10,562	424	16,880	11,024	6,784
<hr/>					
10,563 -	10,587	425	16,920	11,050	6,800
10,588 -	10,612	426	16,960	11,076	6,816
10,613 -	10,637	427	17,000	11,102	6,832
10,638 -	10,662	428	17,040	11,128	6,848
10,663 -	10,687	429	17,080	11,154	6,864
<hr/>					
10,688 -	or more	430	* 17,120	11,180	6,880

* The claimant will be ineligible for benefits unless 20% of the claimant's total base year wages was paid in a quarter or quarters other than the high quarter.

[Pa.B. Doc. No. 00-2226. Filed for public inspection December 22, 2000, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Medical Assistance Program Fee Schedule Revisions; 1999/2000 HCPCS Updates

The Department of Public Welfare announces that effective January 1, 2000, changes have been made to the Medical Assistance Program Fee Schedule as a result of implementing the 1999 and 2000 updates to the Health Care Financing Administration Common Procedure Coding System (HCPCS). The update contains code changes required by the Health Care Financing Administration and other codes added to the Fee Schedule to enable providers to bill in accordance with current standards of practice. The new procedure codes are compensable beginning January 1, 2000. Fees for the new procedure codes will be published in a Medical Assistance Bulletin that will be issued to all providers.

Changes to the Medical Assistance Program Fee Schedule for Provider Types 01, 03, 04, 05, 07, 10, 11, 12, 15, 16, 17, 19, 20, 23, 30, 43, 49 and 50.

Additions Effective January 1, 2000

TOS	Procedure Code	TOS	Procedure Code	TOS	Procedure Code	TOS	Procedure Code	TOS	Procedure Code
AE	A4280	AE	A4381	AE	A4394	AE, 9P	A7007	40	D9241
AE	A4369	AE	A4382	AE	A4395	AE, 9P	A7008	9R	E0779
AE	A4370	AE	A4383	AE	A5200	AE	A7009	9R	E0780
AE	A4371	AE	A4384	AE	A6200	AE	A7010	9P	E0785
AE	A4372	AE	A4385	AE	A6201	AE	A7011	9R	E1390
AE	A4373	AE	A4386	AE	A6202	AE	A7012	60, AK, AL	G0108
AE	A4374	AE	A4387	AE, 9P	A7000	AE	A7013	60, AK, AL	G0109
AE	A4375	AE	A4388	AE, 9P	A7001	AE	A7014	9P	K0458
AE	A4376	AE	A4389	AE	A7002	AE	A7015	9P	K0459
AE	A4377	AE	A4390	AE	A7003	AE	A7016	9P, 9R	K0531
AE	A4378	AE	A4391	AE, 9P	A7004	AE, 9P	A7017	AM	L1690
AE	A4379	AE	A4392	AE	A7005	20, 27	D7471	AM	L1847
AE	A4380	AE	A4393	AE	A7006	20, 27	D7871	AM	L5968
AM	L5975	10, 20, 40	33282	10, 20, 27, 40	44202	10, 20, 27, 40	54692	25, 27	62318
AM	L5988	10, 20, 40	33284	10, 20, 27, 40	44970	10, 20, 27, 40	55550	25, 27	62319
AM	L6693	10, 20, 40	33410	10, 20, 27, 40	47560	10, 20, 40	57107	25	64470
AM	L8015	20, 40	33968	10, 20, 27, 40	47561	10, 20, 40	57109	25	64472
AM	L8035	10, 20, 40	35682	10, 20, 27, 40	47562	10, 20, 40	58550	25	64475
10, 20, 40	13102	10, 20, 40	35683	10, 20, 27, 40	47563	10, 20, 47, 40	58551	25	64476
10, 20, 40	13122	25	36521	10, 20, 27, 40	47564	25, 40	58555	25	64479
10, 20, 40	13133	25	36550	10, 20, 27, 40	47570	25, 27, 40	58558	25	64480
10, 20, 40	13153	10, 20, 40	36819	10, 20, 27, 40	49320	10, 20, 27, 40	58559	25	64483
10, 20, 40	15001	10, 20, 27, 40	36831	10, 20, 27, 40	49321	10, 20, 27, 40	58560	25	64484
10, 20, 40	15351	10, 20, 27, 40	36833	10, 20, 27, 40	49322	10, 20, 27, 40	58561	20, 40	64626
10, 20, 40	15401	10, 20, 27, 40	38120	10, 20, 27, 40	49323	10, 20, 27, 40	58562	20, 40	64627
20	20979	10, 20, 27, 40	38570	10, 20, 27, 40	49650	10, 20, 27, 40	58563	20, 40	67220

NOTICES

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<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>
10, 20, 27, 40	22318	10, 20, 27, 40	38571	10, 20, 27, 40	49651	10, 20, 27, 40	58660	54, 57, RD	73542
10, 20, 27, 40	22319	10, 20, 27, 40	38572	10, 20, 27, 40	50541	10, 20, 27, 40	58665	54, 57, RD	76005
25	27096	10, 20, 40	39560	10, 20, 27, 40	50544	10, 20, 27, 40	58661	51	77427
20, 27, 40	27347	10, 20, 40	39561	10, 20, 27, 40	50546	10, 20, 27, 40	58662	53, 58, RN	78020
20, 27, 40	28289	10, 20, 27, 40	43280	10, 20, 27, 40	50547	10, 20, 27, 40	58670	53, 58, RN	78206
25, 40	31623	10, 20, 27, 40	43651	10, 20, 27, 40	50548	10, 20, 27, 40	58671	53, 58, RN	78456
25, 40	31624	10, 20, 27, 40	43652	10, 20, 27, 40	50945	10, 20, 27, 40	58673	53, 58, RN	78494
25, 40	31643	10, 20, 27, 40	43653	10, 20, 27, 40	51990	10, 20, 27, 40	61862	53, 58, RN	78496
25, 40	32997	10, 20, 27, 40	44200	10, 20, 27, 40	51992	25, 27	62310	53, 58, RN	78588
10, 20, 40	33140	10, 20, 27, 40	44201	10, 20, 27, 40	54690	25, 27	62311	86	80048
86	80053	86	83893	86	84376	86	88166	60	90660
86	80069	86	83897	86	84377	86	88167	80	94621
86	80074	86	83901	86	84378	86	88249	AY, AZ	94621
86	80076	86	83903	86	84379	86	88264	60	95970
86	82127	86	83904	86	85046	60	90378	60	95972
86	82726	86	83905	86	88153	60	90657	60	95973
86	83021	86	83906	86	88154	60	90658	60	95974
86	83716	86	83919	86	88165	60	90659	60	95975
86	83891	86	84154						

End—Dated January 31, 2001

Procedure codes being deleted from the fee schedule as a result of those updates and which will not be compensable for services provided after January 31, 2001

<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>
20, 27	D7470	AE	K0137	9P	K0171	9P	K0177	9P	K0191
40	D9240	AE	K0138	9P	K0172	9P	K0178	9P	K0192
9R	E1400	AE	K0139	9P	K0173	9P	K0179	9R	K0193
9R	E1401	9P	K0168	9P	K0174	9P	K0180	9R	K0194
9R	E1402	9P	K0169	9P	K0175	9P	K0181	AE	K0277
9R	E1403	9P	K0170	9P	K0176	9P	K0190	AE	K0278
AE	K0279	AE	K0432	10, 20, 27, 40	56304	10, 20, 40	56324	10, 20, 40	61855
9R	K0284	AE	K0433	10, 20, 27, 40	56305	10, 20, 27, 40	56340	10, 20, 40	61865
AE	K0419	AE	K0434	10, 20, 27, 40	56306	10, 20, 27, 40	56341	25, 27	62274
AE	K0420	AE	K0435	10, 20, 27, 40	56307	10, 20, 27, 40	56342	25	62275
AE	K0421	AE	K0436	10, 20, 27, 40	56308	10, 20, 27, 40	56343	25, 27	62276
AE	K0422	AE	K0437	10, 20, 27, 40	56309	10, 20, 27, 40	56349	25, 27	62277

<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>	<i>TOS</i>	<i>Procedure Code</i>
AE	K0423	20, 27, 40	13300	10, 20, 27, 40	56311	25, 27, 40	56350	25, 27	62278
AE	K0424	20, 27, 40	15580	10, 20, 40	56312	10, 20, 27, 40	56351	25, 27, 40	62279
AE	K0425	20, 27, 40	15625	10, 20, 40	56313	10, 20, 27, 40	56352	25, 27	62288
AE	K0426	10, 20, 27, 40	33242	10, 20, 27, 40	56315	10, 20, 27, 40	56353	25, 27	62289
AE	K0427	10, 20, 27, 40	33247	10, 20, 27, 40	56316	10, 20, 27, 40	56354	25, 27	62298
AE	K0428	10, 20, 27, 40	56300	10, 20, 27, 40	56317	10, 20, 27, 40	56355	25, 27	64440
AE	K0429	10, 20, 27, 40	56301	10, 20, 27, 40	56320	10, 20, 27, 40	56356	25, 27	64441
AE	K0430	10, 20, 27, 40	56302	10, 20, 40	56322	10, 20, 27, 40	56362	25, 27	64442
AE	K0431	10, 20, 27, 40	56303	10, 20, 40	56323	10, 20, 27, 40	56363	25, 27	64443
51	74419	51	77430	86	80058	86	80092	60	90745
51	77420	86	80049	86	80059	86	86588		
51	77425	86	80054	86	80091	60	90592		

The fiscal note was prepared under provision of Section 612 of The Administrative code of 1929 (71 P. S. § 232).

Price changes made to the Medical Assistance Fee Schedule are routinely included in carryforward budget estimates.

Contact Person:

Interested persons are invited to submit written comments to this notice within 30-days of this publication. Comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Any comments received will be considered for subsequent Fee Schedule updates.

Persons with a disability may use the AT&T Relay Services by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). Persons who require another alternative should contact Thomas Vracarich at (717) 783-2800.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-NOT-265. (1) General Fund; (2) Implementing Year 2000-01 is \$4,675,000; (3) 1st Succeeding Year 2001-02 is \$2,801,000; 2nd Succeeding Year 2002-03 is \$2,785,000; 3rd Succeeding Year 2003-04 is \$2,785,000; 4th Succeeding Year 2004-05 is \$2,785,000; 5th Succeeding Year 2005-06 is \$2,785,000; (4) 1999-00 Program—\$622,669,000; 1998-99 Program—\$695,935,000; 1997-98 Program—\$662,740,000; (7) Medical Assistance—Outpatient; (8) recommends adoption. These changes are retroactive to January 1, 2000. Funds are available in the budget for these changes.

[Pa.B. Doc. No. 00-2227. Filed for public inspection December 22, 2000, 9:00 a.m.]

DEPARTMENT OF REVENUE

Realty Transfer Tax; Revised 1999 Common Level Ratio Real Estate Valuation Factor

The following real estate valuation factor is based on sales data compiled by the State Tax Equalization Board in 1999. This factor is the mathematical reciprocal of the actual common level ratio. For Pennsylvania Realty Transfer Tax purposes, this factor is applicable for documents accepted from January 1, 2001, to June 30, 2001, except as indicated. The date of acceptance of a document is rebuttably presumed to be its date of execution, that is, the date specified in the body of the document as the date

of the instrument 61 Pa. Code § 91.102 (relating to acceptance of documents).

<i>County</i>	<i>Adjusted Common Level Ratio Factor</i>
* Franklin	5.71

* Adjusted by the Department of Revenue to reflect assessment ratio change effective January 1, 2001.

LARRY P. WILLIAMS,
Acting Secretary

[Pa.B. Doc. No. 00-2228. Filed for public inspection December 22, 2000, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Finding

Philadelphia

Pursuant to the provisions of 71 P. S. Section 2002(b), the Secretary of Transportation makes the following written finding:

The Department of Transportation and the City of Philadelphia plan to replace the Germantown Avenue Bridge, which crosses over the Wissahickon Creek in the City of Philadelphia.

The proposed bridge replacement includes the demolition of the existing Germantown Avenue Bridge, which has been determined to be a contributing element to the Fairmount Park and Chestnut Hill Historic Districts, which are listed on the National Register of Historic Places. The selection of the replacement on a modified south approach alignment alternative minimizes the impact to both Chestnut Hill and Fairmount Park Historic Districts, Section 4(f) and Section 2002 resources, and best preserves the historicity of the circa 1786 bridge piers.

The project boundaries extend from the northern entrance to Chestnut Hill College on the northeast side of the Creek to the intersection of Hillcrest Avenue on the southeast quadrant of the bridge. The southeast corner of the Project is predominantly residential and commercial. The Germantown Avenue Bridge Replacement provides a primary link between residential neighborhoods on the east side of the Wissahickon Creek with the Chestnut Hill and Fairmount Park Historic Districts. The replacement bridge is being designed to be aesthetically compatible with the adjacent Historic Districts, and it will not substantially impair protected attributes or contributing elements of these adjacent cultural resources.

The replacement structure is anticipated to be a three span, continuous, composite, curved steel plate girder. In summary, the superstructure will be replaced with one travel lane and one bicycle lane in each direction; pedestrian facilities will be incorporated over the length of the Project; left turn lanes will be constructed at Hillcrest Avenue and Sugarloaf slope; sidewalks on both sides, the Western sidewalk being a separate pedestrian bridge which leads directly to the Fairmount Park Trailhead; and minimal disturbance to the surrounding Wissahickon landscaping.

I have considered the environmental, economic, social, and other effects of the proposed project as enumerated in Section 2002 of the Administrative Code, and have concluded that there is no feasible and prudent alternative to the project as designed, and all reasonable steps have been taken to minimize such effect.

No adverse environmental effect is likely to result from the construction of this project.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 00-2229. Filed for public inspection December 22, 2000, 9:00 a.m.]

FISH AND BOAT COMMISSION

Consideration of Change to Wilderness Trout Stream Designation

At the next meeting of the Fish and Boat Commission (Commission) on January 12 and 13, 2001, the Commission will consider extending the wilderness trout stream designation of East Hickory Creek in Warren County. Currently, a 5.6-mile section of East Hickory Creek from the headwaters downstream to the confluence with Middle Hickory Creek is managed for wild trout pursuant to 58 Pa. Code § 57.4 (relating to wilderness trout streams). This section of stream is located within the boundaries of the Allegheny National Forest and is part of the Hickory Creek Wilderness Area. At present, the lower boundary of the Hickory Creek Wilderness Area is the Allegheny National Forest Road 119 Bridge, which is located 1.6 miles downstream of the confluence with Middle Hickory Creek. In the interest of providing a common boundary for wilderness management programs, the United States Forest Service has requested that the Commission extend the length of its wilderness trout stream designation on this water. Therefore, the Commission will consider extending the wilderness trout stream designation on East Hickory Creek downstream for a distance of 1.6 miles to the Allegheny National Forest Road 119 Bridge. The revised limits will extend from the headwaters downstream to the Allegheny National Forest Road 119 Bridge, for a distance of 7.2 miles. This change, if approved by the Commission, will go into effect upon publication in the *Pennsylvania Bulletin*.

At this time, the Commission is soliciting public input concerning the designation. Persons with comments, objections or suggestions concerning the designation are invited to submit comments in writing to Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000 by no later than 4 p.m. on January 11, 2001. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "ra-pfbcregs@state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

[Pa.B. Doc. No. 00-2230. Filed for public inspection December 22, 2000, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Sections 5(d) and (g) of the Regulatory Review Act (71 P. S. §§ 745.5(d) and (g)) provide that the designated

standing committees may issue comments within 20 days of the close of the public comment period, and the Independent Regulatory Review Commission (Commission) may issue comments within 10 days of the close of the committees' comment period. The Commission's Comments are based upon the criteria contained in subsections 5.1(h) and (i) of the Regulatory Review Act (75 P. S. §§ 745.5a(h) and (i)).

The Commission issued Comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted by the date indicated.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Issued</i>	<i>Final-Form Submission Deadline</i>
12-55	Department of Labor & Industry Food-Service Employee Incentive Program	12/07/00	11/06/02

**Department of Labor and Industry
Regulation No. 12-55**

Food-Service Employee Incentive Program

December 7, 2000

We submit for consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) which have not been met. The Department of Labor and Industry (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by November 6, 2002, the regulation will be deemed withdrawn.

1. Complaint or dispute resolution.—Reasonableness; Clarity.

This regulation does not provide a method for resolving disputes or complaints dealing with escrow funds or the disbursement of such funds. We understand that the Department will use existing procedures based on section 260.9a of the Wage Payment and Collection Law (43 P. S. § 260.9a). Adding a new section on complaint or dispute resolution with a citation to this statute would clarify this regulation.

2. Section 231.95. Employee incentive account.—Consistency with statute.

Subsection (b)

For consistency with the Act, the phrase "no less than" should be inserted between the phrases "consisting of" and "the difference" in the first sentence of Subsection (b).

Subsection (f)

Subsection (f) requires the employer to allow the Department access to records maintained under this section "within seven days following written or verbal notice." Who will give "written or verbal notice?" This should be clarified in the final-form regulation.

3. Section 231.96. Writing required.—Reasonableness; Clarity.

Subsection (d) states "The Department will prepare a recommended notification and acknowledgement form . . . (and the Department) will make these forms available on

its Internet Web site and through other means." The phrase "other means" is unclear. The "other means" should be listed in the final-form regulation.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 00-2231. Filed for public inspection December 22, 2000, 9:00 a.m.]

INSURANCE DEPARTMENT

Aetna U.S. Healthcare; Rate Filing

On December 1, 2000, Aetna U.S. Healthcare submitted a rate filing to increase its Central/Northeastern Pennsylvania service area commercial HMO premium rates. The filing represents an average annual increase over the second quarter 2000 approved filing of approximately 19% on medical and 22% on pharmacy. The estimated rate increase will affect about 77,000 medical members and 69,000 pharmacy members. The increase will result in an additional annual premium income of approximately \$60 million (\$50 million on medical and \$10 million on pharmacy). The proposed effective date is April 1, 2001.

This filing is available for public inspection during normal working hours at the Harrisburg Office at 1311 Strawberry Square, Harrisburg, PA 17120.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Actuary, Bureau of Accident & Health Insurance, Insurance Department, within 30 days after the publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-2232. Filed for public inspection December 22, 2000, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) in connection with the termination of the insured's automobile policy. The hearing will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure).

The administrative hearings will be held in the Insurance Department's Offices in Harrisburg or Philadelphia, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Harrisburg Regional Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Keith McClain; file no. 00-181-07921; Pennsylvania National Mutual Casualty; doc. no. P00-12-004; January 18, 2001, 10 a.m.

The following hearings will be held in the Philadelphia Regional Office, Room 1701, State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Martin and Arlene Techner; file no. 00-210-03930; National Union Fire Insurance Co. of Pittsburgh, PA; doc. no. PH00-12-011; March 26, 2001, at 10 a.m.;

Appeal of Martha J. Bixby; file no. 00-280-04176; Erie Insurance Exchange; doc. no. PH00-12-010; March 26, 2001, at 11 a.m.;

Appeal of Devera W. Davis; file no. 00-210-04016; Keystone Insurance Company; doc. no. PH00-12-013; March 26, 2001, at 1 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses and the like necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Commissioner may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-2233. Filed for public inspection December 22, 2000, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insured has requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P.S. § 1171.8) in connection with the termination of the insured's residential or personal coverage. This administrative hearing will be held in the Insurance Department Offices in Harrisburg, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearing will be held at the Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Francis E. Zahuranec; file no. 00-181-07160; Nationwide Insurance Company; doc. no. P00-12-009; January 24, 2001, at 1 p.m.

Each party may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses and the like necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-2234. Filed for public inspection December 22, 2000, 9:00 a.m.]

Workers' Compensation Security Fund Assessment

The Insurance Commissioner (Commissioner) has determined that assessments for the Workers' Compensation Security Fund (WCSF) for 2000 will be required of all insurers writing workers' compensation insurance in the Commonwealth. Accordingly, an assessment equal to 1% of each insurers net written premiums determined as of June 30, 2000, will be imposed.

Under section 5 of the Workers' Compensation Security Fund Act (77 P.S. § 1055), the Commissioner shall impose an assessment equal to 1% of each insurer's net written premiums if the WCSF Balance minus the WCSF Loss Reserve is less than 5% of the Insurers' Loss Reserve. The Commissioner ascertained that the Insurers' Loss Reserve as of June 30, 2000, is \$6,070,001,845. Five percent of that reserve is \$303,500,092.25. The WCSF Balance minus the WCSF Loss Reserve is \$260,084,926.09. Accordingly, the WCSF Balance less the WCSF Loss Reserve is less than 5% of Insurers Loss Reserve, triggering the need for the assessment.

Payment of the assessment is due no later than January 22, 2001. Insurers will be billed by the WCSF in December, 2000. Questions or comments regarding the assessment may be directed to: Michael P. Sullivan, Claims Manager, Workers' Compensation Security Fund, 901 N. 7th Street, Harrisburg, PA 17102, (717) 783-8093, FAX: (717) 705-0140.

Insurers are reminded that any carrier which fails to pay the contribution when due is subject to a 5% penalty on the total unpaid contribution. Thereafter, for each month (or portion thereof) in which the contribution remains unpaid, a 1% penalty will be imposed on the

unpaid balance. Additional penalties for nonpayment can also include revocation of the insurer's certificate of authority. (77 P. S. § 1059).

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 00-2235. Filed for public inspection December 22, 2000, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Certificate of Public Convenience Without Hearing

A-211800 F2001. Manufacturers Water Company. Application of Manufacturers Water Company for Certificate of Public Convenience evidencing approval of the abandonment of public utility water service in favor of municipal water service in Cambria and Somerset Counties, Pennsylvania.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before January 8, 2001, under 52 Pa. Code (relating to public utilities).

Applicant: Manufacturers Water Company

Through and By Counsel: W. Edwin Ogden, Esquire, Jeffrey A. Franklin, Esquire, Ryan, Russell, Ogden and Seltzer, LLP, 1100 Berkshire Boulevard, Suite 301, Reading, PA 19610-1221; and James F. Beener, Esquire, Barbera, Clapper, Beener, Rullo & Melvin, 146 West Main Street, P. O. Box 775, Somerset, PA 15501-0775.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2236. Filed for public inspection December 22, 2000, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before January 16, 2001, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate whether it applies to the temporary authority application or the permanent application or both.

Application of the following for approval of the beginning of the exercise of the right and privilege of operating as contract carrier for transportation of persons as described under each application.

A-00111217, Folder 2. PJ Tours & Travel, Inc. (7500 Germantown Avenue, Elders Hall, Suite 113, Philadel-

phia, Philadelphia County, PA 19119), a corporation of the Commonwealth of Pennsylvania—persons in group and party service, in vehicles seating 15 passengers or less, including the driver, between points in that portion of Philadelphia bounded as follows: beginning at the confluence of the Schuylkill River and Wissahickon Creek, thence following the Wissahickon Creek to its intersection with Walnut Lane, thence along Walnut Lane to its intersection with Wayne Avenue, thence along Wayne Avenue to its intersection with the Roosevelt Expressway, thence along the Roosevelt Expressway to its intersection with Broad Street (U. S. Highway Route 611), thence north on U. S. Highway Route 611 to the Philadelphia/Montgomery County Line, thence following the Philadelphia/Montgomery Line to its intersection with the Schuylkill River, thence south along the Schuylkill River to the point of beginning, and from points in the described portion of Philadelphia to other points in Pennsylvania, and return; subject to the following conditions: (a) provided that no right, power or privilege is granted to perform transportation in conventional school bus-type equipment; and (b) provided that the rights granted exclude that portion of the city and county of Philadelphia bounded by Spring Garden Street on the north; South Street on the south; the Schuylkill River on the west and the Delaware River on the east; further excluding the Philadelphia Civic Center and points within 1/2-mile radius thereof.

A-00117376. Daniel F. Colflesh & Pamela S. Colflesh, Copartners, t/d/b/a Stylin' Limousines (1938 North Center Avenue, Somerset, Somerset County, PA 15501)—persons in limousine service, between points in the counties of Somerset and Cambria, and from points in said counties, to points in Pennsylvania, and return. *Attorney:* Timothy P. Keating, 1501 North Front Street, Harrisburg, PA 17102.

Applications of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under each application.

A-00113735, Folder 2. Valvano's Limousine, Inc. (R.D. 1, Box 476, Falls, Wyoming County, PA 18615), a corporation of the Commonwealth of Pennsylvania—persons in group and party service, in vehicles seating 15 passengers or less, including the driver, between points in the counties of Wyoming, Luzerne, Lackawanna, Susquehanna, Bradford and Sullivan, and from points in said counties, to points in Pennsylvania, and return.

Applications of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons by transfer of rights as described under each application.

A-00117049, Folder 2. Paul K. Brown, Inc., t/d/b/a Professional Limousine Service (P. O. Box 99531, Pittsburgh, Allegheny County, PA 15233), a corporation of the Commonwealth of Pennsylvania—(1) persons in group and party service in vehicles seating 15 passengers or less, including the driver, between points in the counties of Armstrong, Butler, Beaver, Lawrence, Washington, Westmoreland, Somerset and Fayette, and from points in the county of Allegheny, to points in the counties of Armstrong, Butler, Beaver, Lawrence, Washington, Westmoreland, Somerset and Fayette, and return; and (2) persons in group and party service, in vehicles seating more than 15 passengers, including the driver, between points in Pennsylvania; which is to be a transfer of all of the rights authorized under the certificate issued at

A-00111548, F. 2 to Primo Limousine Co., Inc., subject to the same limitations and conditions. *Attorney:* Stephen Jurman, 1400 Lee Drive, Moon Township, PA 15108.

Applications of the following for amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for transportation of persons as described under each application.

A-00105983, Folder 2, Am-B. Manor Valley Taxi, Inc. (P. O. Box 457, Manor, Westmoreland County, PA 15665), a corporation of the Commonwealth of Pennsylvania, inter alia—persons in paratransit service, between points in the borough of Manor, Westmoreland County, and points within 4 miles of the limits thereof, which are north of the northerly right-of-way of Consolidated Rail Corporation, the boroughs of Irwin and North Irwin, and the township of North Huntingdon, Westmoreland County, and from points in said territory, to points within an airline distance of 20 statute miles of the limits of the borough of Manor, and return: *so as to permit* the transportation of persons in paratransit service, between points in the boroughs of Adamsburg and Penn, and the township of Sewickley, all located in Westmoreland County, and from points in said territory, to points in Pennsylvania, and return. *Attorney:* John A. Pillar, 1106 Frick Building, Pittsburgh, PA 15219.

A-00108403, Folder 1, Am-A. Charles Edward Gratz, t/d/b/a Chuck Gratz Limousine Service (315 Jefferson Avenue, Washington, Washington County, PA 15301)—persons in limousine service, between points in the counties of Westmoreland, Fayette, Lawrence, Armstrong, Indiana, Cambria, Somerset, Washington, Beaver and Butler, and from points in said counties and from points in the county of Allegheny, to points in Pennsylvania, and return: *Which Is To Be In Lieu Of* its common carrier authority at A-00108403 which reads as follows: persons in limousine service between points in the county of Washington, and from points in the said county, to other points in Pennsylvania, and return.

A-00114955, Folder 1, Am-A. Lock Haven Emergency Medical Services (21 Liberty Street, Lock Haven, Clinton County, PA 17745), a corporation of the Commonwealth of Pennsylvania—persons in paratransit service, between points in the city of Lock Haven, and within an airline distance of 35 statute miles of the limits of said city, and from points in said territory, to points in Pennsylvania, and return: *Which Is To Be In Lieu Of* its common carrier authority at A-00114955 which reads as follows: To transport, as a common carrier, persons in paratransit service, for medical treatment, between points in the city of Lock Haven, Clinton County, and within an airline distance of 35 statute miles of the limits of said city, and from points in said territory, to points in Pennsylvania, and return. *Attorney:* Marci M. Schneider, The Jandl Building, 4029 West Tilghman Street, Allentown, PA 18104.

A-00116256, Folder 1, Am-A. William H. O'Brien, t/d/b/a Aero Limousine Company of Pittsburgh (P. O. Box 1710, Washington, Washington County, PA 15301-1171)—persons in limousine service: (1) between points in Washington County, and from points in said county, to points in Pennsylvania, and return; and (2) from points in the county of Allegheny, to points in Pennsylvania, and return; with both rights subject to the following condition: that no right, power or privilege is granted to provide service for persons attending funerals or for funeral homes in connection with funeral services: *Which Is To Be In Lieu Of* his common carrier authority at A-00116256

which reads as follows: To transport, as a common carrier, persons in limousine service: (1) between points in Washington County, and from points in said county, to points in the counties of Allegheny, Beaver, Butler, Fayette, Greene and Somerset, and return; and (1) from points in the county of Allegheny, to points in the counties of Beaver, Fayette, Greene, Somerset and Washington, and return; with both rights subject to the following conditions: (a) that no right, power or privilege is granted to provide service for persons attending funerals or for funeral homes in connection with funeral services. *Attorney:* John A. Pillar, 680 Washington Road, Suite B 101, Pittsburgh, PA 15228.

Applications of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of household goods by transfer of rights as described under each application.

A-00115371, Folder 2. Mambo Movers, Inc. (P. O. Box 43737, Philadelphia, Philadelphia County, PA 19107), a corporation of the Commonwealth of Pennsylvania—household goods in use, between points in the city and county of Philadelphia; which is to be a transfer of all of the rights authorized under the certificate issued at A-00076042, F. 2, James Stewart, subject to the same limitations and conditions.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2237. Filed for public inspection December 22, 2000, 9:00 a.m.]

Telecommunications

A-310725F0002AMA. United Telephone Company d/b/a Sprint and FairPoint Communications Solutions Corp. Joint Petition of the United Telephone Company d/b/a Sprint and FairPoint Communications Solutions Corp. for approval of a master interconnection and resale agreement under section 252(a)(1) and (e) of the Telecommunications Act of 1996.

United Telephone Company d/b/a Sprint and FairPoint Communications Solutions Corp., by its counsel, filed on December 4, 2000, at the Pennsylvania Public Utility Commission, a Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the United Telephone Company d/b/a Sprint and FairPoint Communications Solutions Corp. Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2238. Filed for public inspection December 22, 2000, 9:00 a.m.]

Telecommunications

A-310760. United Telephone Company d/b/a Sprint and @Link Networks, Inc. d/b/a @Link. Joint Petition of the United Telephone Company d/b/a Sprint and @Link Networks, Inc. d/b/a @Link for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

United Telephone Company d/b/a Sprint and @Link Networks, Inc. d/b/a @Link, by its counsel, filed on December 4, 2000, at the Pennsylvania Public Utility Commission, a Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the United Telephone Company d/b/a Sprint and @Link Networks, Inc. d/b/a @Link Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2239. Filed for public inspection December 22, 2000, 9:00 a.m.]

Telecommunications

A-310904F0002. Verizon Pennsylvania, Inc. and BroadBand Office Communications, Inc. Joint Petition of Verizon Pennsylvania Inc. and BroadBand Office Communications, Inc. for approval of adoption of an interconnection agreement under section 252(i) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and BroadBand Office Communications, Inc., by its counsel, filed on December 4, 2000, at the Pennsylvania Public Utility Commission, a Joint Petition for approval of an Interconnection Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and BroadBand Office Communications, Inc. Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2240. Filed for public inspection December 22, 2000, 9:00 a.m.]

Transfer by Sale
Without Hearing

A-211085F5000 and A-230118F5000. Glendale Yearound Water Company and Glendale Yearound Sewer Company. Application of Glendale Yearound Water Company and Glendale Yearound Sewer Company, for approval of the transfer to Ludwig Rudel of all of the outstanding capital stock of Glendale Yearound Water Company and Glendale Yearound Sewer Company.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before January 8, 2001, under 52 Pa. Code (relating to public utilities).

Applicant: Glendale Yearound Water Company, Glendale Yearound Sewer Company

Through and By Counsel: Charles B. Zwally, Esquire, Guy P. Beneventano, Esquire, Mette, Evans & Woodside, P. O. Box 5950, 3401 North Front Street, Harrisburg, PA 17110.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2241. Filed for public inspection December 22, 2000, 9:00 a.m.]

Transfer by Sale
Without Hearing

A-110300 F0096. Metropolitan Edison Company. Application of Metropolitan Edison Company for approval of the Transfer by Sale to Waste Management Disposal Services of Pennsylvania, Inc., of Certain Electric Facilities located in the Township of Lower Windsor, County of York and Commonwealth of Pennsylvania.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before January 8, 2001, under 52 Pa. Code (relating to public utilities).

Applicant: Metropolitan Edison Company

Through and By Counsel: William C. Matthews, II, 2800 Pottsville Pike, Reading, PA 19640.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2242. Filed for public inspection December 22, 2000, 9:00 a.m.]

Transfer by Sale
Without Hearing

A-110300 F0097. Metropolitan Edison Company. Application of Metropolitan Edison Company for approval of the Transfer by Sale to Bucks County Crushed Stone Company of Certain Electric Facilities located along Quarry Road, Ottsville, Pennsylvania.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the

Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before January 8, 2001, under 52 Pa. Code (relating to public utilities).

Applicant: Metropolitan Edison Company

Through and By Counsel: William C. Matthews, II, 2800 Pottsville Pike, Reading, PA 19640.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2243. Filed for public inspection December 22, 2000, 9:00 a.m.]

Transfer by Sale Without Hearing

A-122050 F0005. North Penn Gas Company. Application of North Penn Gas Company for approval of the Transfer by Sale of Certain Facilities to ACC Operations, Inc., located in the Borough of Port Allegheny, McKean County, Pennsylvania.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before January 8, 2001, under 52 Pa. Code (relating to public utilities).

Applicant: North Penn Gas Company

Through and By Counsel: Paul E. Russell, Two North Ninth Street, Allentown, PA 18101-1179.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2244. Filed for public inspection December 22, 2000, 9:00 a.m.]

Transfer by Sale Without Hearing

A-110500 F0305. PPL Electric Utilities Corporation d/b/a PPL Utilities. Application of PPL Electric Utilities Corporation, d/b/a PPL Utilities, for approval of the transfer by sale of Certain Facilities to the Cumberland County Board of Commissioners, located in Carlisle, Cumberland County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before January 8, 2001, under 52 Pa. Code (relating to public utilities).

Applicant: PPL Electric Utilities Corporation d/b/a PPL Utilities

Through and By Counsel: Paul E. Russell, Two North Ninth Street, Allentown, PA 18101-1179.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2245. Filed for public inspection December 22, 2000, 9:00 a.m.]

Water Service Without Hearing

A-212285 F0081. Pennsylvania-American Water Company. Application of Pennsylvania-American Water Company for approval of the right to offer, render, furnish or supply water service to the public in an additional portion of Penn Township, Butler County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before January 8, 2001, under 52 Pa. Code (relating to public utilities).

Applicant: Pennsylvania-American Water Company

Through and By Counsel: Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, 800 West Hersheypark Drive, Hershey, Pa 17033.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2246. Filed for public inspection December 22, 2000, 9:00 a.m.]

Water Service Without Hearing

A-212285 F0082. Pennsylvania-American Water Company. Application of Pennsylvania-American Water Company for approval of the right to offer, render, furnish or supply water service to the public in an additional portion of Whitmarsh Township, Montgomery County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before January 8, 2001, under 52 Pa. Code (relating to public utilities).

Applicant: Pennsylvania-American Water Company

Through and By Counsel: Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, 800 West Hersheypark Drive, Hershey, Pa 17033.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 00-2247. Filed for public inspection December 22, 2000, 9:00 a.m.]

SECURITIES COMMISSION

Compliance Notice to the Viatical Industry

Purpose of Notice

The purpose of this notice is to advise persons involved in the viatical industry of the need, under certain circumstances, to comply with the Pennsylvania Securities Act of 1972 (1972 Act). This notice is being issued because the Pennsylvania Securities Commission (PSC) has identified an increase in the number of enforcement cases involving the sale of "interests" in viatical settlement contracts to Pennsylvania residents. In these cases, PSC has alleged that the "interests" are securities under the 1972 Act. These "interests" were not registered under the 1972 Act, were sold in a fraudulent manner, or were offered and sold by persons who were not registered under the 1972 Act.

The Viatical Industry

A viatical settlement contract is an agreement under which a person will receive compensation in return for an assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of a life insurance policy or certificate of insurance. The person receiving compensation in return for assignment of the benefits of the life insurance is known as the viator. The person making the offer of compensation generally is known as a viatical settlement broker. The amount of compensation received by the viator will be less than the expected amount of the death benefit.

The viatical industry grew primarily as a result of the AIDS disease. Many individuals who were diagnosed with a potentially terminal illness and owned life insurance policies sought to unlock the value of the death benefit of these policies. Thus, the viatical industry met and continues to meet a consumer need by persons who are diagnosed as terminally ill.

When Viatical Interests are Securities under the 1972 Act

Viatical settlement contracts and viatical settlement brokers generally are regulated by state insurance authorities. However, persons in the viatical industry that seek to raise money from investors to fund viatical settlement contracts and those involved in raising such funds also are subject to State and Federal securities laws, including the 1972 Act.

PSC asserts jurisdiction through the 1972 Act in situations where Pennsylvania residents are being solicited to provide funds for the purchase of numerous viatical settlement contracts because what is being sold are securities and existing provisions of the 1972 Act apply. Often the security being sold is an "investment contract" which is included in the definition of security in Section 102(t) of the 1972 Act.

An "investment contract" is defined by the U.S. Supreme Court to include any investment of money by persons in a common enterprise (funding the purchase of viatical settlement contracts) who expect a profit through the efforts of others (promoter of the investment) (*SEC v. Howey*, 328 U.S. 293 (1946)). Pennsylvania courts have approved use of the Howey test for purposes of the 1972 Act (*Leon M. Martin v. ITM/International Trading & Marketing Ltd.*, *William M. Erbe and David F. Dunn*, 494 A.2d 451 (Pa.Super. 1985)). Often promoters refer to the investment contract as an "interest" in a viatical settlement contract (Viatical Interests). Pennsylvania is in accord with the vast majority of states that use the

investment contract analysis to determine if funding schemes for viatical settlement contracts are securities under state securities laws.

SEC v. Life Partners

In its investigation of the sale of Viatical Interests to Pennsylvania residents, some persons have cited *SEC v. Life Partners* (87 F.3d 536 (DC Cir. 1996)) for the proposition that the Viatical Interests they are selling are not securities. PSC advises that this case was determined on very narrow issues which generally are not present in the PSC's enforcement cases. Further, this is a Federal case which is not automatically binding on Pennsylvania Courts. To PSC's knowledge, no Pennsylvania Court to date has ruled on the applicability of *Life Partners* to Section 102(t) of the 1972 Act.

Securities Registration Requirement

Because Viatical Interests are securities, they are subject to the securities registration requirements of Section 201 of the 1972 Act. Sections 202 and 203 provide certain exemptions from securities registration, some of which require a notice filing with PSC, and Section 211 requires a notice filing with PSC if the Viatical Interests are being sold in accord with Rule 506 adopted under Regulation D of the U.S. Securities and Exchange Commission (SEC). If the exemptions or notice filing provisions are unavailable, the securities must be registered with PSC. This means that they cannot be sold until the PSC affirmatively registers the Viatical Interests.

PSC recently has received some notice filings and at least one registered offering under Section 205 of the 1972 Act involving the offer and sale of securities to Pennsylvania residents, the proceeds of which were to be used to fund the purchase of viatical settlement contracts.

Requirement to Comply with Anti-Fraud Provision of Securities Laws

The issuer of the Viatical Interests is responsible for compliance with the securities registration requirements of the 1972 Act and the anti-fraud provisions of Section 401. Unlike insurance regulation, the issuer is not required to make specific mandated disclosures to purchasers but is under a legal obligation to disclose all information material to the transaction. Pursuant to case law (*TSC, Inc. v. Northway Industries, Inc.*, 426 U.S. 438 (1976)), this information is that which a reasonable person would believe important in order to make an informed investment decision.

Requirement to Register as a Broker-Dealer or Agent

Persons selling Viatical Interests, usually for a sales commission and very often without the knowledge of their firm (whether it be an insurance company or broker or a securities broker-dealer), are engaged in offering and selling securities and should be registered as a broker-dealer or agent of a broker-dealer under Section 301 of the 1972 Act.

SEC Requirements

Persons involved in the viatical industry who are engaged in activities that may fall under PSC jurisdiction also should consult SEC and Federal securities laws to identify any SEC requirements.

Typical PSC Viatical Interests Enforcement Case

In a typical PSC enforcement case involving Viatical Interests, the Viatical Interests are not registered under the 1972 Act nor is there an exemption available; the

person selling the Viatical Interests is not registered as a broker-dealer or agent under Section 301 of the 1972 Act; and the issuer and persons effecting the transactions have omitted to disclose material information relating to the transaction or have made materially misleading statements thereby contravening the anti-fraud provisions of Section 401 of the 1972 Act.

Regulatory Cooperation

This notice to the viatical industry was prepared in cooperation with the Pennsylvania Department of Insurance.

Contact Person

The PSC contact person for any inquiries concerning this notice is Scott A. Lane, Assistant Director, Division of Enforcement and Litigation, 806 Pittsburgh State Office Building, Pittsburgh, PA 15222, (412) 565-5083.

M. JOANNA CUMMINGS,
Secretary

[Pa.B. Doc. No. 00-2248. Filed for public inspection December 22, 2000, 9:00 a.m.]

Designation of an Investment Adviser Registration Depository

Whereas, Section 303(a) of the Pennsylvania Securities Act of 1972 (1972 Act) requires Federally covered advisers, as that term is defined in Section 102(f.1) of the 1972 Act (FCAs), to make a notice filing with the Pennsylvania Securities Commission (Commission); and

Whereas, Section 602(d.1) requires FCAs to pay notice filing fee annually to the Commission (Notice Filing Fee); and

Whereas, Commission Regulation 303.015, 64 Pa. Code § 303.015, states that the notice filing required by Section 303(a) of the 1972 Act shall be the Uniform Application for Investment Adviser Registration (Form ADV); and

Whereas, Form ADV requires filing of an annual updating amendment to Form ADV within 90 days after the end of the FCA's fiscal year end and the prompt filing of an amendment to Form ADV if certain information on Form ADV becomes inaccurate or if any information on Form ADV becomes materially inaccurate (Form ADV Amendment); and

Whereas, the U.S. Securities and Exchange Commission (SEC) has issued rules concerning the filing of Form ADV with an investment adviser registration depository by persons registered or applying for registration with SEC (SEC Release IA-1897) under the Federal Investment Advisers Act of 1940 (1940 Act); and

Whereas, a FCA is defined in Section 102(f.1) of the 1972 Act as a person who is registered under Section 203 of the 1940 Act; and

Whereas, Section 703(a) of the 1972 Act provides that the Commission seek to coordinate interpretation and administration of the 1972 Act with Federal regulation; and

Whereas, Commission Regulation 303.015 authorizes the Commission, by order, to designate an investment adviser registration depository for the receipt of Form ADV, Form ADV Amendments and the Notice Filing Fees; and

Whereas, the Commission, finds it necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue the following Order:

Now, Therefore, the Commission, on the 12th day of December 2000, pursuant to Commission Regulation 303.015, 64 Pa. Code § 303.015, orders the following:

1. For purposes of Commission Regulation 303.015, the Commission designates the following as the only investment adviser registration depository authorized to receive Form ADVs, Form ADV Amendments and Notice Filing Fees on behalf of the Commission (IARD):

IARD Document Processing
NASD Regulation, Inc.
P. O. Box 4959
Gaithersburg, MD 20898-9495
www.iard.com

2. Except as provided in Paragraph 5, beginning January 1, 2001 and thereafter, FCAs making an initial Form ADV notice filing with the Commission under Section 303(a)(iii) of the 1972 Act shall file Form ADV and pay the Notice Filing Fee through the IARD. Form ADV shall be deemed filed and the Notice Filing Fee shall be deemed received by the Commission on the date such items are accepted by IARD. These FCAs shall file all Form ADV Amendments with IARD.

3. Except as provided in Paragraph 5, FCAs that made a Form ADV notice filing with the Commission prior to January 1, 2001 shall re-file Form ADV with IARD using the amended Form ADV in accordance with the transition schedule established in SEC Release No. IA-1897 (see www.sec.gov/offices/invmgmt/iard/fileschd.htm). After transition to IARD has been completed in accordance with SEC schedules, these FCAs shall file Form ADV Amendments with IARD.

4. Except as provided in Paragraph 5 and for any renewal occurring after January 1, 2001, FCAs making a renewal with the Commission in accordance with Regulation 303.015(b) shall pay the Notice Filing Fee through IARD.

5. The following FCAs will not be required to file with IARD but shall file manually on paper Form ADV and Form ADV Amendments directly with the Commission accompanied by any required Notice Filing Fee:

A. A FCA that is making an initial Form ADV notice filing with the Commission which has received a hardship exemption from SEC permitting a paper filing.

B. A FCA that made a Form ADV notice filing with the Commission prior to January 1, 2001 that has received a hardship exemption from SEC permitting a paper filing.

6. The effective date of this Order shall be the date published in the *Pennsylvania Bulletin*.

Alternative formats of this document may be available upon request. Call (717) 787-1165 or TDD Users: via AT&T Relay Center (800) 654.5984.

M. JOANNA CUMMINGS,
Secretary

[Pa.B. Doc. No. 00-2249. Filed for public inspection December 22, 2000, 9:00 a.m.]

STATE BOARD OF EDUCATION

Schedule of Meetings

The regular meetings of the State Board of Education, Councils of Basic and Higher Education and the State Board for Vocational Education will be held on the following dates:

January 17-18, 2001
March 14-15, 2001
May 9-10, 2001
July 11-12, 2001
September 12-13, 2001
November 14-15, 2001

Unless due and timely notice to the contrary is given, these meetings will be held in the Conference Rooms on the Lobby Level and First Floor of the Education Building, 333 Market Street, Harrisburg.

The contact person regarding the meetings is Peter H. Garland, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333; (717) 787-3787; TDD (717) 783-8445. Persons with disabilities needing special accommodations to attend the meetings may contact Dr. Garland at least 24 hours in advance so that arrangements can be made.

PETER H. GARLAND,
Executive Director

[Pa.B. Doc. No. 00-2250. Filed for public inspection December 22, 2000, 9:00 a.m.]

TURNPIKE COMMISSION

Retention of Two Engineering or Environmental Firms

Open End Contracts to Provide Environmental Services

Reference No. 3-135

The Turnpike Commission will retain two firms for Open End Contracts to provide environmental services on various projects located on the entire length of the Turnpike System.

The type of tasks to be addressed may include, but are not limited to, the following: Project need documentation; alternatives analysis evaluation; farmlands evaluations and ALCAB presentations; historical structures inventories; Phase I, II, and III archeological investigations; wetlands identification and delineation, value and function analysis, permitting, and mitigation design; surface water quality and aquatic biota investigations; hazardous

waste investigations; threatened and endangered species investigations; noise monitoring, modeling and abatement evaluations; air quality investigations; and municipalities planning code and zoning. The Team must possess GPS equipment and staff experienced in its utilization.

The contract will be for a not-to-exceed amount of \$750,000, or a 3 year period, whichever occurs first.

The following factors will be considered by the Commission during the evaluation of the firms submitting Letters of Interest for this project:

a. Specialized experience and technical competence of prime consultant and subconsultants. The Team must clearly demonstrate an ability to analyze available data to make decisions and develop plans to complete the project in a timely and cost effective manner.

b. Past record of performance with respect to cost control, work quality, ability to meet schedules and previous experience on similar projects. The consultant should identify similar projects that have been completed by that firm as the prime, the magnitude of the project, and the client.

c. The specific experience and number of individuals who constitute the firm.

d. Location of consultant's office where the work will be performed.

e. Workload of the prime consultant and subconsultants for all Department of Transportation and Turnpike Commission projects.

f. Other factors, if any, specific to the project.

Address these items and any necessary further details in a brief yet comprehensive manner in the letter of interest.

Questions and inquiries concerning this Project should be directed to David Willis at 939-9551, extension 3570 or by e-mail at dwillis@paturnpike.com.

General Requirements and Information

Firms interested in providing the above work and services are invited to submit a Letter of Interest with the required information. The Letters of Interest must include the following:

1. One page transmittal letter clearly identifying the project reference number, brief description of the project from the advertisement, the firm's Federal identification number, the firm's legal name, contact person or project manager, address of corporate office and project office. (If the firm has multiple offices, the location of the office performing the work must be identified)

2. A three page expression of interest on the advertised project. Each firm should demonstrate their ability to perform the specific requirements indicated for each project and provide explanation that the firm has successfully completed similar type projects of the same magnitude.

3. An organization chart for the Project, identifying key personnel and any subconsultants and their roles. Any deviation from the subconsultant's listed in the letter of interest will require written approval from the Commission.

4. Tabulation of workload for the prime consultant and all subconsultants for all Department of Transportation and Turnpike Commission projects.

5. An Annual Qualification Package similar to the one submitted to the Department of Transportation for the

current year that is in the same District as this project or one that is best suited for this project.

The Annual Qualification Package should contain at a minimum the following information for the prime consultant and all subconsultants and attached to the back of the letter of interest (subs to follow primes):

- Standard Form (SF) 254—Architect-Engineer and Related Services Questionnaire in its entirety, not more than 1 year old as of the date of the advertisement.
- Resumes of key personnel expected to be involved in the project. (limit to one 8 1/2 x 11 page, one side, per person) . Only resumes of key personnel should be included.
- Copy of the firm's registration to do business in the Commonwealth as provided by the Department of State for firms with out-of-state headquarters or corporations not incorporated in Pennsylvania.
- A copy of the Department's DBE/WBE Certification, if applicable.

If a Joint Venture responds to a project advertisement, the Commission will not accept separate letters of interest from joint venture constituents. A firm will not be permitted to submit a letter of interest on more than one joint venture for the same project reference number. Also, a firm that responds to a project as a prime may not be included as a designated subconsultant to another firm that responds to the same project advertisement. This does not preclude a firm from being set forth as a designated subconsultant to more than one prime consultant responding to the project advertisement.

Firms interested in performing the above services are invited to submit a letter of interest and required information to Barry L. Troup, P.E., Assistant Chief Engineer for Design, at the Turnpike Commission Administration Building located at 176 Kost Road, Carlisle, PA 17013-0779. (FedEx address: 176 Kost Road, Carlisle, PA 17013-0779) (Mailing Address: P. O. Box 67676, Harrisburg, PA 17106-7676).

The letter of interest and required information must be received by 12 p.m. (noon), Friday, January 12, 2001. Any letters of interest received after this date and time will be time-stamped and returned.

Based on an evaluation of acceptable letters of interest received in response to these solicitations, two firms will be selected, one for each contract. The order of preference will be established by the Technical Review Committee and approved by the Commission. The first two firms identified by the Commission will be selected. Technical Proposals or Requests for Proposals will not be requested prior to selection.

The Commission reserves the right to reject all letters of interest, to cancel solicitation requested under this notice, and/or to re-advertise solicitation for the work and services.

BRADLEY L. MALLORY,
Chairperson

[Pa.B. Doc. No. 00-2251. Filed for public inspection December 22, 2000, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:

The payment date specified in the contract.

30 days after the later of the receipt of a proper invoice or receipt of goods or services.

The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center

PA Department of Community and Economic Development

374 Forum Building

Harrisburg, PA 17120

800-280-3801 or (717) 783-5700

Reader's Guide

Legal Services & Consultation—26

① Service Code
Identification Number

② Commodity/Supply or
Contract Identification No.

B-54137. Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services

Location: Harrisburg, Pa.

Duration: 12/1/93-12/30/93

Contact: Procurement Division
787-0000

③ Contract
Information

④ Department

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:)
Vendor Services Section
717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.

② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.

③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.

④ Department: State Department or Agency initiating request for advertisement.

⑤ Location: Area where contract performance will be executed.

⑥ Duration: Time estimate for performance and/or execution of contract.

⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, *"Frequently Asked Questions About State Contracts,"* explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**

Pennsylvania State Treasury
Room G13 Finance Building
Harrisburg, PA 17120
717-787-2990
1-800-252-4700

BARBARA HAFER,
State Treasurer

Commodities

7809-51 Poplin fabric in various colors

Department: Corrections
Location: Various locations throughout PA
Duration: 1 year
Contact: MaryAnn Ulrich, (717) 731-7134

1255110 Converted Van Type Passenger Vehicle (Handicap Van). For a copy of bid package fax request to (717) 787-0725.

Department: Corrections
Location: Camp Hill, PA
Duration: FY 2000-01
Contact: Vendor Services, (717) 787-2199

1284310 Audio Video Switching System. For a copy of bid package fax request to (717) 787-0725.

Department: PA Emergency Management Agency
Location: Harrisburg, PA
Duration: FY 2000-01
Contact: Vendor Services, (717) 787-2199

1297150 Various Fitness Equipment. For a copy of bid package fax request to (717) 787-0725. If you have problems downloading a bid, please call our Fax Back System at (717) 705-6001.

Department: Education
Location: PA State University, University Park, PA
Duration: FY 2000-01
Contact: Vendor Services, (717) 787-2199

FL-260099 Paper, cash register, 190' roll, for IBM Model 4683 and 4684, 50 rolls/case.

Department: Liquor Control Board
Location: Procurement Division Warehouse, 3525 North Sixth Street, Harrisburg, PA 17110-1425
Duration: One time purchase
Contact: Jim Hanks, (717) 787-1893

6530-06 Incontinent Care Products. For a copy of bid package fax request to (717) 787-0725.

Department: General Services
Location: Various
Duration: FY 2000-01
Contact: Vendor Services, (717) 787-2199

4509-SO-024 Containers, Spiral Can with Tops and "BIG HOUSE" logo artwork applied to containers.

Department: Corrections
Location: Correctional Industries (Soap Plant), SCI Huntingdon, 1301 Pennsylvania Avenue, Huntingdon, PA 16652
Duration: 1 Year
Contact: Angela M. Corish, (717) 731-7134

SERVICES

Agricultural Services—02

M-4960 SNAP BEAN SEEDS Bush, Green 3,000 Lbs. Bush, Yellow 7,000 Lbs.

Department: Corrections
Location: State Correctional Institution at Rockview, Rt. 26, Box A, Bellefonte, Pa. 16823
Duration: March 1, 2001 to June 30, 2001
Contact: Cheryl Crispell, P.A. 2, (814) 355-4874, ext. 206

SP 3800138 Services required for mechanical control of competing vegetation on approximately 791 acres of forested lands in various state forest areas in Pennsylvania.

Department: Conservation and Natural Resources
Location: Various counties
Duration: May 1, 2001 thru April 30, 2002
Contact: Corinna Walters, (717) 783-0733

M-4964 WHITE POTATO SEEDS Kennebec - Mid-late 80,000 Lbs. Superior - Early 30,000 Lbs.

Department: Corrections
Location: State Correctional Institution at Rockview, Rt. 26, Box A, Bellefonte, Pa. 16823
Duration: April 1, 2001 to June 30, 2001
Contact: Cheryl Crispell, P.A. 2, (814) 355-4874, ext. 206

M-4961 CAL-AG LIME 800 Tons Spread on fields at SCIR farm

Department: Corrections
Location: State Correctional Institution at Rockview, Rt. 26, Box A, Bellefonte, Pa. 16823
Duration: January 5, 2001 to June 30, 2001
Contact: Cheryl Crispell, P.A. 2, (814) 355-4874, ext. 206

Construction & Construction Maintenance—09

6797-45 PROJECT TITLE: Operable Partitions. The Sports & Exhibition Authority ("Owner") will receive sealed bids for trade packages as identified below for Additions and Renovations to the David L. Lawrence Convention Center (the "Project"). The Architect for the Project is Rafael Vinoly Architects, P.C., The Construction Manager is Turner Construction Company, P.J. Dick Incorporated and ATS, Inc., a joint venture. APPROXIMATE VALUE: \$1,000,000.00 to \$2,500,000.00. Bid Packages can be examined and Bids will be received by Owner at the field office of the Construction Manager located at 951 Penn Avenue, Pittsburgh, Pennsylvania 15222. Bid Date: THURSDAY, January 4, 2001 at 2:00 P.M. Inquiries regarding the bidding should be made to the Construction Manager at its field office located at 951 Penn Avenue, Pittsburgh, PA 15222, Attn: Ralph Shipe, Tel: 412/227-2010, FAX: 412/227-2015. Bid Packages may be obtained through Accu-Copy, 412/281-0799. Determination of Responsibility. Bids will be awarded to bidders determined to be "responsible" by the Owner based upon criteria applicable to the particular Bid Package. Bidders must complete and submit a Determination of Responsibility ("DOR") with the bid. A non-Mandatory pre-bid meeting will be Friday, December 15, 2000 at 2:00 P.M. at TPA Construction Office, 951 Penn Ave. (basement level), Pittsburgh, PA. Contact: Ralph Shipe, Tel: 412/227-2010. All recipients of the Bid Packages are invited and urged to attend this Pre-Bid Meeting.

Department: General Services
Location: 951 Penn Ave. (basement level, Pittsburgh, Allegheny County, PA
Duration: Indeterminate 2000—2001
Contact: Ralph Shipe, (412) 227-2010

6797-37 PROJECT TITLE: Overhead Coiling Doors & Grilles. The Sports & Exhibition Authority ("Owner") will receive sealed bids for trade packages as identified below for Additions and Renovations to the David L. Lawrence Convention Center (the "Project"). The Architect for the Project is Rafael Vinoly Architects, P.C. The Construction Manager is Turner Construction Company, P.J. Dick Incorporated and ATS, Inc., a joint venture. APPROXIMATE VALUE: \$100,000.00 to \$500,000.00. Bid Packages can be examined and Bids will be received by Owner at the field office of the Construction Manager located at 951 Penn Avenue, Pittsburgh, Pennsylvania 15222. Bid Date: THURSDAY, January 4, 2001 at 2:00 P.M. Inquiries regarding the bidding should be made to the Construction Manager at its field office located at 951 Penn Avenue, Pittsburgh, PA 15222, Attn: Ralph Shipe, Tel: 412/227-2010, FAX: 412/227-2015. Bid Packages may be obtained through Accu-Copy, 412/281-0799. Determination of Responsibility. Bids will be awarded to bidders determined to be "responsible" by the Owner based upon criteria applicable to the particular Bid Package. Bidders must complete and submit a Determination of Responsibility ("DOR") with the bid. A non-Mandatory pre-bid meeting will be Friday, December 15, 2000 at 2:00 P.M. at TPA Construction Office, 951 Penn Ave. (basement level), Pittsburgh, PA. Contact: Ralph Shipe, Tel: 412/227-2010. All recipients of the Bid Packages are invited and urged to attend this Pre-Bid Meeting.

Department: General Services
Location: 951 Penn Ave. (basement level, Pittsburgh, Allegheny County, PA
Duration: Indeterminate 2000—2001
Contact: Ralph Shipe, (412) 227-2010

6797-40 PROJECT TITLE: Tensile Fabric System. The Sports & Exhibition Authority ("Owner") will receive sealed bids for trade packages as identified below for Additions and Renovations to the David L. Lawrence Convention Center (the "Project"). The Architect for the Project is Rafael Vinoly Architects, P.C., The Construction Manager is Turner Construction Company, P.J. Dick Incorporated and ATS, Inc., a joint venture. APPROXIMATE VALUE: \$1,000,000.00 to \$2,000,000.00. Bid Packages can be examined and Bids will be received by Owner at the field office of the Construction Manager located at 951 Penn Avenue, Pittsburgh, Pennsylvania 15222. Bid Date: THURSDAY, January 4, 2001 at 2:00 P.M. Inquiries regarding the bidding should be made to the Construction Manager at its field office located at 951 Penn Avenue, Pittsburgh, PA 15222, Attn: Ralph Shipe, Tel: 412/227-2010, FAX: 412/227-2015. Bid Packages may be obtained through Accu-Copy, 412/281-0799. Determination of Responsibility. Bids will be awarded to bidders determined to be "responsible" by the Owner based upon criteria applicable to the particular Bid Package. Bidders must complete and submit a Determination of Responsibility ("DOR") with the bid. A non-Mandatory pre-bid meeting will be Wednesday, December 13, 2000 at 2:00 P.M. at TPA Construction Office, 951 Penn Ave. (basement level), Pittsburgh, PA. Contact: Ralph Shipe, Tel: 412/227-2010. All recipients of the Bid Packages are invited and urged to attend this Pre-Bid Meeting.

Department: General Services
Location: 951 Penn Ave. (basement level, Pittsburgh, Allegheny County, PA
Duration: Indeterminate 2000—2001
Contact: Ralph Shipe, (412) 227-2010

FDC-325-732 Develop day use facility at The Boyd Big Tree Conservation Area in Middle Paxton Township, Dauphin County. Work includes excavating, backfilling, and compacting; geotextiles (85 S.Y.); C. P. pipe (330 L.F.); 2 inlets; bituminous paving (140 tons); aggregates (2100 tons); class R4 rock (20 tons); landscaping and 1 warning sign. NOTE: Requests for Bid Documents will be taken ON or AFTER January 2, 2001.

Department: Conservation and Natural Resources
Location: Middle Paxton Township
Duration: 45 days
Contact: Construction Management Section, (717) 787-5055

00881038 Construction of three-bay garage on the outside of the security fence located at the Loysville Youth Development Center, R.D.#2, Box 365B, Loysville, PA 17047. Complete specifications will be mailed with bid.

Department: Public Welfare
Location: Loysville Youth Development Center, R.D.#2, Box 365B, Loysville, PA 17047
Duration: Anticipated Start Date 1/1/2001 - 6/30/2001
Contact: Dee Kuhn, Purchasing Agent, (717) 789-5509

00880005 Renovate Dorm B Dayroom located at Youth Forestry Camp #3, R.D.#1, Box 175, James Creek, PA 16657. Complete specifications will be mailed with bid.

Department: Public Welfare
Location: Loysville Youth Development Center, R.D.#2, Box 365B, Loysville, PA 17047
Duration: Anticipated Start Date 1/1/2001 - 6/30/2001
Contact: Dee Kuhn, Purchasing Agent, (717) 789-5509

Elevator Maintenance—13

SBC 110460009 Contractor to provide labor, material, equipment, tools, and supervision required to install one (1) wheelchair lift which will be adjacent to an existing outside 8 foot tunnel wall located at the State Correctional Institution at Laurel Highlands. A site visit is required. Bid on file at Institution.

Department: Corrections
Location: State Correctional Institution, Laurel Highlands, 5706 Glades Pike, PO Box 631, Somerset, PA 15501-0631
Duration: 02/15/01 to 03/31/01
Contact: Carole S. Kolesko PA II, (814) 445-6501

HVAC Services—22

00881015 Replacement of compressor in the air conditioning system located at Danville Center for Adolescent Females, 13 Kirkbride Drive, Danville, PA 17821. Complete specifications will be mailed with bid.

Department: Public Welfare
Location: Loysville Youth Development Center, R.D.#2, Box 365B, Loysville, PA 17047
Duration: Anticipated Start Date 1/1/2001 - 6/30/2001
Contact: Dee Kuhn, Purchasing Agent, (717) 789-5509

457721 & 457579 Holophane High Mast Lighting Products. (Female & Male DN Multipin Plug 20 A 600 V Max) (Mast Receptacles)

Department: Corrections
Location: SCI Camp Hill, 2500 Lisburn Road, P.O. Box 8837, Camp Hill, PA 17001-8837
Duration: Items needed delivered ASAP!
Contact: Michelle L. Ryan, (717) 975-5267

Laboratory Services—24

SP 10777001 Laboratory Services.

Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9504
Duration: 07/01/01 through 06/30/06
Contact: Stanley Rygelski, P.A., (570) 587-7291

Medical Services—29

SP 00781025 Provide Route Ambulance Service. For detailed specifications, contact the Purchasing Office at (610) 670-4129.

Department: Public Welfare
Location: Wernersville State Hospital, Route 422 West, Berks County, P.O. Box 300, Wernersville, PA 19565-0300
Duration: Anticipated Start Date: July 1, 2001
Contact: Nancy Deininger, Purchasing Agent, (610) 670-4129

SP 00781023 Outpatient laboratory services. For detailed specifications, contact the Purchasing Office at (610) 670-4129.

Department: Public Welfare
Location: Wernersville State Hospital, Route 422 West, Berks County, P.O. Box 300, Wernersville, PA 19565-0300
Duration: Anticipated Start Date: July 1, 2001
Contact: Nancy Deininger, Purchasing Agent, (610) 670-4129

1300380011 Seeking medical treatment and care for our approximately 350 residential students at S.S.V.C. This service is required when students are on campus (mid August through the first week in June). Services include, but are not limited to, providing daily "sick call" visits to campus Monday through Friday; providing physical examinations, particularly for athletes; performs minor surgery; provides on-call service and assistance to our registered nurses concerning medical care, if necessary. Contract will be a four-year option to renew by mutual agreement.

Department: Military Affairs
Location: Scotland School for Veterans' Children, 3583 Scotland Rd., Scotland, PA 17254-0900
Duration: May 1, 2001 - June 30, 2001, with a 4-year renewal option
Contact: Marion E. Jones, (717) 264-7187, X661

Property Maintenance & Renovation—33

00026001 Snow and ice removal at the Fayette County Assistance Office. Complete specifications may be obtained by contacting the Procurement Office. You may fax request to (717) 787-3560.

Department: Public Welfare
Location: Department of Public Welfare, Fayette County Assistance Office, 41 West Church Street, Uniontown, PA 15401
Duration: February 1, 2001 - December 31, 2002, with three (3) one-year renewals.
Contact: Rose Wadlinger, (717) 783-3767

1050-01-bldg Installation of glazed ceramic tile floor set in a modular pattern using the thinset application method. Floor to be leveled in accordance with adhesive manufacturer's instructions. Area to be covered is approx. 2363.60 sq. ft. with no interruption of tile pattern through openings. Surrounding areas must be protected from damage. Clean tile and grout surfaces. Clean up any areas that have been affected by this work. Facility is undergoing extensive renovations with multiple contractors and tile installation is to be coordinated with other contractors. Anticipated time will be between March 2001 and July 2001. Schedule must be approved by County Maintenance Manager.

Department: Turnpike Commission
Location: Maintenance building on SR2037 off TR36, 1 mile East of Punxsutawney, Pa. 15767
Duration: Feb. 2001 through Nov. 2001
Contact: Dan Cessna, Ron Irwin, Janice Redding, (814) 938-6300 or 938-3816

461461 Grounds Maintenance/Landscaping to include but not limited to mowing, mulching, pruning shrubs, spring and fall clean-up. Contact Bob McGill at 717-783-3596 or fax your name and address to 717-783-4438 to request a bid package.

Department: Transportation
Location: Equipment Division, 17th Street & Arsenal Blvd., Harrisburg, PA 17120
Duration: Contract will be for a period of five (5) years.
Contact: Bob McGill, (717) 783-3596

120R-036 Pesticide spraying throughout Fayette County according to Bid Specifications.

Department: Transportation
Location: All PennDot Roadways in Fayette County
Duration: 1 year with two 2-year renewals
Contact: Michael D. Maurer, (724) 439-7374

120R-035 Wildflower planting and maintenance through Engineering District 12-0. According to bid specifications

Department: Transportation
Location: Fayette, Greene, Washington, and Westmoreland Counties
Duration: 1 year with two 2-year renewals
Contact: Michael D. Maurer, (724) 439-7374

120R-034 Complete landscape maintenance at two interstate welcome centers according to bid specifications.

Department: Transportation
Location: I 70 Eastbound at milepost 5 in Washington County, I 79 Northbound at milepost 6 in Greene County
Duration: 1 year with two 2-year renewals
Contact: Michael D. Maurer, (724) 439-7374

120R-037 Pesticide spraying throughout Greene County according to Bid Specification.

Department: Transportation
Location: All PennDot Roadways in Greene County
Duration: 1 year with one year renewal
Contact: Michael D. Maurer, (724) 439-7374

Real Estate Services—35

93148 LEASE OFFICE SPACE TO THE COMMONWEALTH OF PA Proposals are invited to provide 8,863 sq. ft. of office space with 19 parking spaces, (in areas where street or public parking is not available, an additional 20 parking spaces are required) within a three (3) mile radius of the Wellsboro Courthouse, Wellsboro, Tioga County, PA. The Department of Public Welfare, Tioga County Assistance Office will occupy the space. Downtown locations will be considered. For more information on Solicitation #93148 which is due on January 22, 2001 visit www.dgs.state.pa.us or call (717) 787-4394.

Department: Public Welfare
Location: 505 North Office Building, Harrisburg, PA 17125
Duration: Indeterminate 2000—2001
Contact: Mrs. Cynthia Lentz, (717) 787-0952

SP3508540106 Services of one (1) Low Boy Tractor Trailer Unit capable of hauling up to 35 tons in weight, including operators, fuel, motor oil, permitting, and all blocking, etc., for loading, transporting and unloading heavy equipment in the Bituminous Coal Region upon request.

Department: Environmental Protection
Location: Bituminous Coal Region
Duration: One year with possible five one (1) year renewals upon mutual agreement.
Contact: Phyllis Cocco, (814) 472-1811

93081 LEASE OFFICE/MAINTENANCE SPACE TO THE COMMONWEALTH OF PA Proposals are invited to provide the Department of Transportation 31,899 useable sq. ft. of office/maintenance space in Washington County, PA. with a minimum parking for 60 vehicles to be located within a ten (10) mile radius of the present site located at Murtland Ave. Washington, Washington County, PA, 15301. The space will be occupied by the Department of Transportation, District 12-4 Maintenance Facility. For more information on Solicitation #93081 which is due on February 5, 2001 visit www.dgs.state.pa.us or call (717) 787-7419.

Department: Transportation
Location: 505 North Office Building, Harrisburg, PA 17125
Duration: Indeterminate 2000—2001
Contact: Mr. Robert Kleimenhagen, Jr., (717) 787-7419

Sanitation—36

SP 00781024 Removal and disposal of non-recyclable refuse/trash and recyclable materials. For detailed specifications, contact the Purchasing Office at (610) 670-4129.

Department: Public Welfare
Location: Wernersville State Hospital, Route 422 West, Berks County, P.O. Box 300, Wernersville, PA 19565-0300
Duration: Anticipated Start Date: July 1, 2001
Contact: Nancy Deininger, Purchasing Agent, (610) 670-4129

Security Services—37

SP2500006-37 The Pennsylvania Board of Probation and Parole is requesting the services of a nationwide security transport system for the rapid movement of interstate fugitives from one jurisdiction to another. We request this service for parole violators from Pennsylvania who are located and confined in other states or possibly countries and who have been ordered returned as violators by the Pennsylvania Board of Probation and Parole. Parole violators are returned to various locations in Pennsylvania, as designated by the Board.

Department: Probation and Parole Board
Location: Nationwide
Duration: One (1) year with the option to renew for an additional two (2) years at one (1) year intervals.
Contact: Dawn M. Eshenour, (717) 787-1989

Vehicle, Heavy Equipment & Powered Machinery—38

SP#10782003 The contractor shall provide, on a rental basis, a self-propelled articulating telescopic aerial work platform, JLG Model 40HA as manufactured by JLG Industries, Inc. MCConnellsburg, PA 17233, or functional equivalent as approved by the Contract Administrator, to the Hamburg Center. To receive detailed specifications, submit FAX to Beverly O. Epting, PA Hamburg Center, Hamburg, PA 19526 FAX: 610/562-6025

Department: Public Welfare
Location: Hamburg Center, Old Route 22, Hamburg, PA 19526
Duration: Anticipated Contract Period: September 1, 2001-August 31, 2004
Contact: Beverly O. Epting, PA, (610) 562-6031

Miscellaneous—39

FL 000000001 Roughneck all-welded series, Model #R1960MHT River Boat or approved equal. Boat to be 19 feet long, center console, trailer, navigation lights, oar locks, oars, 80 HP jet engine with hydraulic power tilt, beam 83", bottom width 60", side depth 21.5", transom height 21", ribs 12, all-welded aluminum body, hull gauge .100

Department: Conservation and Natural Resources
Location: Delaware Canal State Park, 11 Lodi Hill Road, Upper Black Eddy, PA 18972-9540
Duration: June 30, 2001
Contact: Alice Begley, (215) 453-5016

PGC-2672 Agency is seeking contractor to create 17 acres of wildlife habitat in a failed regeneration cut that has little value to wildlife at its present state. Contractor should remove all existing vegetation, grade, smooth and prepare site for planting. Agency personnel will then plant specific vegetation to encourage wildlife habitat. Site is located on State Game Lands 64, Pike Township, Potter County. Site is on the west side of Ainsley Road, approximately 2 miles North of Route 6. More specific information and maps are included in bid package and can be obtained by contacting agency.

Department: Game Commission
Location: Pennsylvania Game Commission, Division of Automotive and Procurement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797
Duration: Upon award through May 15, 2001.
Contact: Diane Shultz or Linda Beaver, (717) 787-6594

RFP The North Central Pennsylvania Regional Planning and Development Commission is seeking a consultant firm to develop a five-year plan to guide the development of elk viewing and related nature tourism opportunities; improve visitor services and support infrastructure; and promote elk watching and other nature tourism activities. The plan will be consistent with, and include an educational component stressing the responsible stewardship of Pennsylvania's wild elk herd and the region's other natural resources. Interested bidders should contact Bob Imhof, Lumber Heritage Region Project Coordinator at (814) 772-7045 (FAX) to request a copy of the RFP. Bids will be due on or before 3:00 p.m. Thursday, February 8, 2001.

Department: Community and Economic Development
Location: North Central Pennsylvania Regional Planning and Development Commission, 651 Montmorenci Avenue, Ridgway, PA 15853
Duration: Upon execution of the contract. Work must be completed by 4/15/2002.
Contact: Bob Imhof, (814) 773-3162

457880 Folger Adam Locks for new institution gates. (Lock 806ER LH & RH) (Lock 806ES LH & RH)

Department: Corrections
Location: SCI Camp Hill, 2500 Lisburn Road, P.O. Box 8837, Camp Hill, PA 17001-8837
Duration: Items needed ASAP for Locksmith
Contact: Michelle Ryan, (717)975-5267

SP2500006 The Pennsylvania Board of Probation and Parole is requesting the services of a nationwide security transport system for the rapid movement of interstate fugitives from one jurisdiction to another. We request this service for parole violators from Pennsylvania who are located and confined in other states or possibly countries and who have been ordered returned as violators by the Pennsylvania Board of Probation and Parole. Parole violators are returned to various locations in Pennsylvania, as designated by the Board.

Department: Probation and Parole Board
Location: Nationwide
Duration: One (1) year with the option to renew for an additional two (2) years at one (1) year intervals.
Contact: Dawn M. Eshenour, (717) 787-1989

461460 Preventive Maintenance of overhead doors, personnel doors and related operating hardware. Contact Bob McGill at (717) 783-3596 or fax your name and address to (717) 783-4438 to request a bid package.

Department: Transportation
Location: Equipment Division, 17th & Arsenal Blvd., Harrisburg, PA 17120
Duration: Contract will be a period of five (5) years.
Contact: Bob McGill, (717) 783-3596

PGC-2673 Agency is seeking contractor to plant 21 acres of herbaceous openings at the North end of Sinnemahoning State Park, which is located along the east side of Route 872, at the Potter/Cameron County line. There are two herbaceous openings to be planted; one of 15 acres, and one of 6 acres. Specific instructions and maps are available by contacting agency.

Department: Game Commission
Location: Pennsylvania Game Commission, Division of Automotive and Procurement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797
Duration: Award of contract through June 15, 2001.
Contact: Diane Shultz or Linda Beaver, (717) 787-6594

6100-00-01 The Department of Conservation and Natural Resources, Bureau of State Parks, is currently soliciting bids to furnish and install four (4) custom-built desks, one (1) custom built bookcase, and one (1) under-counter two-door cabinet to match existing units in place in the Regional Park Office #1. Please call for a complete bid package.

Department: Conservation and Natural Resources
Location: Regional Park Office #1, R.R.#4, Box 212, Route 155N, Emporium, PA 15834
Duration: 45 days from receipt of purchase order
Contact: Christine Slusarick, Purchasing Agent, (814) 486-3365

00974014 Window Cleaning Service. Washing outside of windows only.

Department: Public Welfare
Location: Warren State Hospital, 33 Main Dr., N. Warren, PA 16365-5099
Duration: 05/01/01 - 11/30/01
Contact: John Sample, PA I, (814) 726-4448

1103500014 Vendor to supply parts and labor to repair various size electrical motors used throughout the State Correctional Inst. Graterford.

Department: Corrections
Location: State Correctional Inst. Graterford, Box 246, Off Rt. 29, Graterford, PA 19426
Duration: 1 year
Contact: Kelly Richardson, (610) 489-4151

20038 Furnish steel retention doors w/ windows at SCI Chester. More detailed information may be obtained from the institution.

Department: Corrections
Location: SCI Chester, 500 E. 4th Street, Chester, PA 19013
Duration: March 13- April 12, 2001
Contact: Ben Jarrett, (610) 490-4370

Sp386215001 Apply herbicide treatment to remove the existing vegetation from the embankments of the Lake Wilhelm Dam. Seed and mulch the embankments of the Lake Wilhelm Dam with a low maintenance grass seed mix. Bid opening date: January 15, 2001 2:00 p.m. Prevailing Time

Department: Conservation and Natural Resources
Location: Maurice K. Goddard State Park, 684 Lake Wilhelm Road, Sandy Lake, PA 16145-8715
Duration: March 15, 2001 to June 15, 2001
Contact: Carol Shirey, (724) 865-7854

SO-216 The State Correctional Institution at Somerset will be soliciting bids for Galvanized Fencing Materials needed to construct an RHU Exercise Yard Security Enclosure. Interested vendors should contact the institution directly for a bid package.

Department: Corrections
Location: State Correctional Institution at Somerset, 1590 Walters Mill Road, Somerset, PA 15510-0001
Duration: 12/20/00 through 6/30/01
Contact: Theresa Solarczyk, Pur. Agent II, (814) 443-8100 X311

REL 01-01 Contractor shall provide Protestant chaplaincy services for the inmates at the State Correctional Institution, Cambridge Springs, PA.

Department: Corrections
Location: S.C.I. Cambridge Springs, 451 Fullerton Avenue, Cambridge Springs, PA 16403
Duration: 7/01/2001 to 6/30/2004
Contact: Quentin Hargenrater Jr., (814) 398-5400

REL 01-02 Contractor shall provide Imam Leadership Services (Islamic) for the inmates at the State Correctional Institution, Cambridge Springs, PA.

Department: Corrections
Location: S.C.I. Cambridge Springs, 451 Fullerton Avenue, Cambridge Springs, PA 16403
Duration: 7/01/2001 to 6/30/2004
Contact: Quentin Hargenrater Jr., (814) 398-5400

ED01-01 Contractor shall provide inmate vocational services at the State Correctional Institution, Cambridge Springs, PA. Inmate population is 600-700.

Department: Corrections
Location: S.C.I. Cambridge Springs, 451 Fullerton Avenue, Cambridge Springs, PA 16403
Duration: 4/01/2001 to 6/30/2003
Contact: Quentin Hargenrater Jr., (814) 398-5400

SO-215 The State Correctional Institution at Somerset will be soliciting bids for Curries Hollow Metal Doors with Folger Adams Locking Mechanisms. Vendors interested in bidding on these particular items should contact the institution directly for a bid package.

Department: Corrections
Location: State Correctional Institution at Somerset, 1590 Walters Mill Road, Somerset, PA 15510-0001
Duration: 12/15/00 through 6/30/01
Contact: Theresa Solarczyk, Pur. Agent II, (814) 443-8100 X311

SP10882103 REFUSE HANDLING, COLLECTION & DISPOSAL: Contractor will perform refuse handling, collection, and disposal service between the hours of 8:00AM and 5:00PM three times per week (Monday, Wednesday, and Friday). Refuse shall include garbage, general trash, glass, tin cans, milk cartons, and anything of refuse nature that could accumulate at this Center. Contractor to supply the Center with recommended containers such as Dempster-Dumpmasters. Exact sizes of containers and locations can be obtained by contacting the Center. All solid waste shall be disposed of at a site having valid certificate issued by the Commonwealth of PA Department of Environmental Protection. Contractor to bid on price per month for complete removal of all refuse three times per week.

Department: Public Welfare
Location: Department of Public Welfare, South Mountain Restoration Center, 10058 South Mountain Road, South Mountain, PA 17261
Duration: 5 years: To begin 7/1/01 through 6/30/06
Contact: Jennifer Karper, Financial Mgr., (717) 749-4012

SP10882102 INFECTIOUS WASTE: The contractor shall furnish all labor, equipment, materials, and supplies necessary for the packaging, receipt, removal, transportation, handling, storage, and disposal of infectious waste material as requested by the South Mountain Restoration Center. The contractor shall hold current licensure from DEP to transport, incinerate, sterilize ore irradiate and subsequently landfill both types of waste. Infectious waste classification and packaging on-site shall be performed by the Center and its personnel in accordance with proper hazard class and the regulations of DEP and the Dept. of Transportation. The Center estimates that there will be 8,000 lbs. of infectious waste material removed from the Center during the contract period with pick-up being every two weeks. Additional information can be obtained by contacting the Center.

Department: Public Welfare
Location: Department of Public Welfare, South Mountain Restoration Center, 10058 South Mountain Road, South Mountain, PA 17261
Duration: 3 years: To begin 7/1/01 through 6/30/04
Contact: Jennifer Karper, Financial Mgr., (717) 749-4012

[Pa.B. Doc. No. 00-2252. Filed for public inspection December 22, 2000, 9:00 a.m.]

DESCRIPTION OF LEGEND

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| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,
Secretary

Contract Awards

The following awards have been made by the Department of General Services, Bureau of Purchases:

Requisition or Contract No.	PR Award Date or Contract Effective Date	To	In the Amount Of
9140-01	12/01/00	Agway Petroleum Corp.	1,718,451.01
9140-01	12/01/00	Bedford Valley Petroleum	196,701.20
9140-01	12/01/00	Columbia Petroleum Corp. d/b/a Carlos R. Leffler	1,460,702.78
9140-01	12/01/00	Export Fuel Co. Inc.	217,442.41
9140-01	12/01/00	F C Haab Co. Inc.	103,077.70
9140-01	12/01/00	Montour Oil Service Co.	238,741.79
9140-01	12/01/00	Petroleum Traders Corp.	2,428,828.12
9140-01	12/01/00	Pickelner Fuel Co. Inc.	829,045.52
9140-01	12/01/00	Pipeline Petroleum Co.	52,596.44
9140-01	12/01/00	Reed Oil Co. Inc.	66,628.86
9140-01	12/01/00	Talley Petroleum Enterprises Inc.	1,937,541.67

Requisition or Contract No.	PR Award Date or Contract Effective Date	To	In the Amount Of
1033110-01	12/11/00	Galey & Lord Industries Inc.	76,500.00
1033110-02	12/11/00	Raytex Fabrics Inc.	57,600.00
1085230-01	12/11/00	M & M Uniforms Inc.	50,264.68
1132070-01	12/11/00	The Standard Register Co.	139,200.00
1142200-01	12/11/00	Concept Development Corp.	87,589.05
1151210-01	12/11/00	Gorenflo's Buffalo Wholesale Lock Co. Inc.	34,327.97
1171140-01	12/11/00	Textron Lycoming	38,517.04
1179219-01	12/11/00	Liebensperger Transportation Sales	43,015.00
1189150-01	12/11/00	Xpedx	30,979.55
8248010-01	12/11/00	Eagle Crest Inc.	42,525.00

GARY E. CROWELL,
Secretary

[Pa.B. Doc. No. 00-2253. Filed for public inspection December 22, 2000, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 271—273, 277, 279, 281 AND 283—285]

Municipal Waste

The Environmental Quality Board (Board) by this order amends Chapters 271—273 and 277—285. The amendments are the result of the Department of Environmental Protection (Department) evaluating the municipal waste regulations promulgated in 1988, 1991 and 1992 in accordance with the Secretary of the Department's Regulatory Basics Initiative (RBI) and the Governor's Executive Order 1996-1 (relating to regulatory review and promulgation), which required all departments to reevaluate existing regulations based on specific criteria.

This order was adopted by the Board at its meeting of September 19, 2000.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. Contact Persons

For further information contact William F. Pounds, Chief of the Division of Municipal and Residual Waste, P. O. Box 8472, Rachel Carson State Office Building, Harrisburg, PA 17105-8472, (717) 787-7381; or Kristen M. Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department's website (<http://www.dep.state.pa.us>).

C. Statutory Authority

The final-form rulemaking is being made under the authority of the following:

The Solid Waste Management Act (SWMA) (35 P.S. §§ 6018.101—6018.1003), which in section 105(a) of the SWMA (35 P.S. § 6018.105(a)) grants the Board the power and the duty to adopt the rules and regulations of the Department to carry out the provisions of the SWMA.

The Clean Streams Law (CSL) (35 P.S. §§ 691.1—691.1001), which in section 5(b) of the CSL (35 P.S. § 691.5(b)) grants the Board the authority to formulate, adopt, promulgate and repeal the rules and regulations as are necessary to implement the provisions of the CSL and which in section 402 of the CSL (35 P.S. § 691.402) grants the Board the authority to adopt rules and regulations requiring permits or establishing conditions under which an activity shall be conducted for any activity that creates a danger of pollution of the waters of this Commonwealth or that regulation of the activity is necessary to avoid such pollution.

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) (53 P.S. §§ 4000.101—4000.1904), which in section 302 of Act 101 (53 P.S. § 4000.302) gives the Board the power and duty to adopt

the regulations of the Department to accomplish the purposes and carry out the provisions of Act 101.

The Land Recycling and Environmental Remediation Standards Act (Act 2) (35 P.S. §§ 6026.101—6026.909), which in section 104(a) of Act 2 (35 P.S. § 6026.104(a)) authorizes the Board to adopt Statewide health standards, appropriate mathematically valid statistical tests to define compliance with Act 2 and other regulations that may be needed to implement the provisions of Act 2. Section 301(c) of Act 2 (35 P.S. § 6026.301(c)) authorizes the Department to establish by regulation procedures for determining attainment of remediation standards when practical quantification limits set by the United States Environmental Protection Agency (EPA) have a health risk that is greater than the risk levels established in Act 2. Section 303(a) of Act 2 (35 P.S. § 6026.303(a)) authorizes the Board to promulgate Statewide health standards for regulated substances for each environmental medium and the methods used to calculate the Statewide health standards.

The Infectious and Chemotherapeutic Wastes Law (ICWL) (35 P.S. §§ 6019.1—6019.6), which in sections 2(b) and 4(b) of the ICWL (35 P.S. §§ 6019.2(b) and 6019.4(b)) grants the Department the authority to propose regulations as may be necessary or appropriate to accomplish the purposes of the ICWL and grants the Board the authority to adopt rules and regulations of the Department to accomplish the purposes and to carry out the provisions of the ICWL.

The Administrative Code of 1929 (Administrative Code) (71 P.S. §§ 510-5, 510-17 and 510-20), which in section 1905-A of the Administrative Code authorizes the Department to require applicants for permits and permit revisions to provide written notice to municipalities, in section 1917-A of the Administrative Code authorizes and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition which is declared to be a nuisance by any law administered by the Department, in section 1920-A of the Administrative Code grants the Board the power and the duty to formulate, adopt and promulgate the rules and regulations as may be determined by the Board for the proper performance of the work of the Department and in section 1937-A of the Administrative Code (71 P.S. § 510-37) revises the requirements for grant applications for development and implementation of municipal recycling programs.

The Small Business and Household Pollution Prevention Program Act (SBHPPP) (35 P.S. §§ 6029.201—6029.209), which in section 207 grants the Board the power to promulgate regulations as needed to implement the SBHPPP.

Section 15(a) of the act of November 26, 1997 (P.L. 530, No. 57) (Act 57), repeals section 512(b) of Act 101 pertaining to permit review periods.

The revisions to § 285.219 (relating to transporting foodstuffs and feedstuffs in vehicles used to transport waste) are made under the previously cited authorities and also under the authority of 75 Pa.C.S. (relating to Vehicle Code) (Vehicle Code), which in section 4909(e) of the Vehicle Code (relating to transporting foodstuff in vehicles used to transport waste) grants the Board the power and duty to adopt regulations, if necessary, to carry out the requirements of section 4909 of the Vehicle Code.

The provisions of 27 Pa.C.S. §§ 6101—6133 (relating to Environmental Stewardship and Watershed Protection Act) (ESWPA), which in section 6105(g) of the ESWPA (relating to agencies), grants the Board the authority to promulgate regulations necessary to carry out the purposes of the ESWPA.

The Radiation Protection Act (RPA) (35 P. S. §§ 7110.101—7110.703), which, in sections 301 and 302 of the RPA (35 P. S. §§ 7110.301 and 7110.302), grants the Department the authority to propose regulations and the Board the authority to adopt the Department's regulations to accomplish the purposes and carry out the provisions of the Radiation Protection Act.

D. Background and Summary

The municipal waste program in this Commonwealth was developed under the SWMA and Act 101. The SWMA authorizes the Department to develop and promulgate regulations to manage municipal waste. Act 101 authorizes the Department to regulate municipal waste planning, which includes the development and implementation of county municipal waste management plans, and to administer the planning, recycling and waste reduction programs under Act 101 and the regulations promulgated under it. Under these acts, municipal waste generally consists of waste resulting from operation of residential, municipal, commercial or institutional establishments and from community activities, and includes non-residual and nonhazardous waste sludge from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. Municipal waste does not include source-separated recyclable materials. The municipal waste program also includes the management of infectious and chemotherapeutic waste.

At 18 Pa.B. 1681 (April 8, 1988), the Department promulgated a comprehensive set of regulations for the management of municipal waste. At 22 Pa.B. 4185 (August 7, 1992), the Department promulgated revisions to these regulations to address infectious and chemotherapeutic waste management. At 21 Pa.B. 4179 (September 14, 1991), the Department promulgated revisions concerning financial assurances for municipal waste management. Regulations for municipal waste planning, recycling and waste reduction were promulgated at 22 Pa.B. 5101 (October 10, 1992). Regulations concerning general permits for the beneficial use of municipal waste and the land application of sewage sludge, as well as other regulatory changes, were promulgated at 27 Pa.B. 521 (January 25, 1997). This comprehensive final-form rulemaking includes revisions to regulations promulgated under each of these rulemakings.

The Commonwealth's municipal waste landfill program is a Federally-approved program under the EPA "Subtitle D" Criteria for Municipal Solid Waste Landfills (40 CFR Part 258) (Subtitle D criteria), which became effective October 9, 1993. The EPA Subtitle D criteria contain minimum National criteria for the location, design, operation, cleanup and closure of municipal waste landfills. The Subtitle D criteria give a State flexibility in implementing the criteria if the State has an EPA-approved program, as the Commonwealth does. The Commonwealth's regulations are at least as stringent as the Subtitle D criteria. In several instances in the final-form rulemaking, revisions were made to regulations that are more stringent than the Subtitle standards. Where this occurred, a justification for the regulation's stringency was provided in the "Summary of Regulatory Require-

ments." A list of the regulatory revisions that include requirements that are more stringent than the Subtitle D criteria is as follows:

§ 271.342 (relating to final closure certification).

Chapter 273, Subchapter B (relating to municipal waste landfills-application requirements):

§ 273.202 (relating to areas where municipal waste landfills are prohibited).

§ 273.203 (relating to certification).

§ 273.211 (relating to signs and markers).

§ 273.214 (relating to measurement and inspection of waste).

§ 273.218 (relating to nuisance minimization and control).

§ 273.221 (relating to daily volume).

§ 273.232 (relating to daily cover).

§ 273.233 (relating to intermediate cover and slopes).

§ 273.234 (relating to final cover and grading).

§ 273.251 (relating to scope and requirements).

§ 273.252 (relating to general limitations).

§ 273.253 (relating to subbase).

§ 273.255 (relating to leachate detection zone).

§ 273.258 (relating to leachate collection system within protective cover).

§ 273.275 (relating to leachate collection and storage).

§ 273.276 (relating to leachate analysis and sludge handling).

§ 273.283 (relating to standards for wells and casing of wells).

§ 273.284 (relating to sampling and analysis).

§ 273.286 (relating to groundwater assessment plan).

§ 273.287 (relating to abatement plan).

§ 273.291 (relating to mineral resources).

§ 273.292 (relating to gas control and monitoring).

§ 273.302 (relating to emergency equipment).

§ 273.311 (relating to daily operational records).

For a detailed description and justification of the standards more stringent than EPA Subtitle D, please refer to these sections in the Preamble to the proposed rulemaking, 28 Pa. B. 4319 (August 29, 1998) and in Section E of this Preamble.

This rulemaking was developed in response to the Department Secretary's RBI and the Governor's Executive Order 1996-1, which required all departments to reevaluate existing regulations. The RBI requires evaluation of regulations based on the following criteria: agency requirements are no more stringent than standards imposed by Federal law unless justified by a compelling and articulable Pennsylvania interest or authorized by state law; requirements are eliminated which are no longer necessary or redundant; performance-based requirements are encouraged; new green technologies are encouraged; a pollution prevention approach is supported; and information is prepared in plain, simple, clear and concise language.

The RBI review process invited the regulated community, local governments, environmental interests and the general public to help the Department identify specific

regulations which should be changed based on the RBI criteria. Input was solicited from the Solid Waste Advisory Committee (SWAC), the Pennsylvania Chamber of Business and Industry, the Pennsylvania Waste Industries Association, the Solid Waste Association of North America, and numerous other groups, individual companies and the public. The opportunity for involvement in this process was noticed in the *Pennsylvania Bulletin* with a 90-day comment period. Evaluation of the municipal waste regulations under the RBI criteria resulted in the Department's preparation of eight separate reports. These reports were made available to the general public, the regulated community, local governments and environmental interest groups. In addition, the Department prepared a Comment and Response Document to address the comments received during the RBI evaluation and to identify which regulations would be revised in response to the comments.

In addition to the process previously outlined for the RBI evaluation, the Board held three public hearings and provided a 60-day period of public comment on the proposed regulations. Notice of the proposed rulemaking was published at 28 Pa. B. 4319 (August 29, 1998). During the public comment period of this rulemaking, the Department received 341 comments from 45 commentators. As a result of the comments, the Department made well over 100 changes to the final-form rulemaking.

The final-form regulations also reflect several of the recommendations made in 1996 by the Municipal Waste Stakeholders Group, a 28-member group of recyclers, haulers, landfill operators, county waste authorities, municipal and county government representatives, and environmental and public interest groups, formed to discuss municipal waste issues and cosponsored by the Department and the County Commissioners Association of Pennsylvania. In addition, the final-form regulations clarify the application of the Act 2 remediation standards, which became effective on August 16, 1997, to municipal waste facilities that ceased accepting waste prior to the effective date of the Federal Subtitle D criteria and the application of the Subtitle D standards for facilities that ceased or cease accepting waste after that date.

The final-form regulations include various provisions for protecting the public health and safety from radioactive materials that occasionally arrive at municipal waste facilities. Language was included in the proposed rulemaking that would have required the facilities to screen and monitor waste for radioactive materials. Public comments were received on the proposal. The Department also proposed a *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, document no. 250-3100-001, which received extensive public comment. The Department has prepared a comment/response document for the guidance document. The Department met a number of times with representatives of several components of the waste industry, and on several occasions with SWAC, to discuss its proposed approach. The Department discussed the guidance document with SWAC at its September 9, 1999, and June 8, 2000, meetings. Based on the input the Department received from SWAC and the commentators on the proposed rulemaking and the guidance document, the Department revised the municipal waste regulations and guidance concerning radioactive materials and monitoring. Provisions were placed in various sections throughout the rulemaking to specify the prohibitions and restrictions on acceptance of this type of material. Implementation of the rulemaking will be assisted by the detailed guidance document.

The Department returned to SWAC on July 13, 2000, to address two specific concerns raised by a SWAC member at the June 8th meeting. The SWAC member had expressed concern that short-lived radioactive material from a patient having undergone a medical procedure would unnecessarily cause alarms to trigger frequently. The final-form regulations authorize such material to be disposed in waste facilities upon case-by-case permission from the Department or upon advance authorization in the facility's approved radiation protection action plan, using the general concepts provided in the Department's guidance document to protect the facility workers, the public health and safety and the environment. The same SWAC member expressed concern that grass clippings may cause an alarm to trigger as the result of fertilizer uptake. Some fertilizers may contain naturally occurring radioactive material. The Department feels that it is unlikely that the uptake of and constituents in fertilizer would cause a monitor to alarm. If this should occur, however, the material would be considered naturally occurring radioactive material (NORM), and as such could be approved for disposal or processing at the facility.

On March 11, 1999, and July 8, 1999, the Department briefed SWAC on the comments that were received on the entire municipal waste proposed rulemaking. The Department met with SWAC to present final changes to the regulations on June 8, 2000, at which time SWAC voted unanimously to approve the regulations.

E. Summary of Comments and Responses on the Proposed Rulemaking and Changes Made in the Final Rulemaking

CHAPTER 271. MUNICIPAL WASTE MANAGEMENT

GENERAL PROVISIONS

Subchapter A. GENERAL

§ 271.1. Definitions.

"Airport."

A definition of "airport" was added to the final-form regulations to clarify the types of landing areas that are implicated in the siting restrictions, environmental assessment, permit issuance or denial criteria and notice requirements that are included in the final regulations. The definition cross references the Department of Transportation's regulations.

"Aquifer."

One commentator suggested that the definition of "aquifer" be amended to be based upon the ability of a geological formation to yield "significant quantities of ground water to wells or springs." The Board declined to make this amendment because the current definition of "aquifer" was constructed to reflect a need to prevent groundwater degradation in water-bearing zones that are capable of yielding sufficient water for monitoring purposes, not just areas that have the ability to yield "significant" quantities. A water-bearing zone that is capable of being monitored has the potential to degrade a resource that may be used as an aquifer by an end user. Even formations that yield small volumes of groundwater to a well (monitoring or otherwise) have the potential to discharge to surface water and impact its receptors. Also, lateral variations in permeability of a formation may allow groundwater contamination to migrate into higher producing water-bearing zones that are used for well production.

"Association."

A definition of "association" was added to the final-form regulations to clarify the meaning of that term as used in these regulations, particularly with regard to the identification of interests and compliance history requirements associated with permit applications. The definition is taken from 15 Pa.C.S. § 102 (relating to definitions).

"Autoclave."

One commentator, who had no specific changes for the proposed definition of autoclave, suggested that the Department develop technical guidance that clarifies the phrases "specified temperatures" and "retention times" as used in the definition. The commentator stated that other states, such as Ohio and New York, have adopted detailed regulatory operating requirements for autoclaves that include specific temperatures and retention times necessary to render the waste safe, unusable and unrecognizable. The Board does not believe comprehensive operating standards are necessary for the operation of autoclaves. The current regulations are performance oriented and focus on the use of biological indicators to ensure adequate disinfecting of autoclaves and other types of infectious waste processing facilities. The Board believes that a performance-based scheme is still the best approach.

"Autofluff."

The Board added a definition of "autofluff" to the final-form regulations in response to a commentator's request for a definition to support the use of the term in § 271.2 (relating to scope).

"Byproduct material," "NARM," "NORM," "radioactive material," "source material," "special nuclear material," "TENORM" and "transuranic radioactive material."

All chapters of this final-form rulemaking, except Chapter 285 (relating to storage, collection and transportation of municipal waste), contain provisions designed to protect facility workers, the general public and the environment from the dangers associated with radioactive materials if these materials are unlawfully brought to a municipal waste processing or disposal facility. To facilitate understanding of these provisions, the final rulemaking contains definitions of eight terms relating to radioactive materials that appear in these provisions.

The terms "byproduct material" and "source material" are defined by incorporating by reference their Federal definitions from the *Code of Federal Regulations*. The term "special nuclear material" is also defined by incorporating by reference its Federal definition, but an explanation of several terms in the Federal definition was necessary to relate them to the Commonwealth's regulations.

The term "NARM" is defined as naturally occurring or accelerator-produced radioactive material. The term does not include byproduct, source or special nuclear material. The definition of "NARM" is taken from 25 Pa. Code § 215.2 (relating to definitions).

The term "NORM" is defined as naturally occurring radioactive material. NORM is a nuclide which is radioactive in its natural physical state—that is, not man-made—but does not include source or special nuclear material. The definition of NORM is taken from § 215.2 (relating to definitions).

The term "radioactive material" is defined as a substance, which spontaneously emits alpha or beta particles or photons (gamma radiation) in the process of decay or

transformation of the atom's nucleus. This definition is taken from Document 250-3100-001 and taken from § 215.2.

The term "TENORM" is defined as technologically enhanced naturally occurring radioactive materials. TENORM is NORM which has been altered by human activity in a manner that results in increased radiation exposure to people. The alteration could be a chemical or physical change in form, relocation of the NORM or removal of barriers that isolated the NORM.

The term "transuranic radioactive material" is defined as material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium and curium.

"Clean fill."

While revisions to the definition of "clean fill" were included in the proposed rulemaking, the Department decided not to make changes to the final-form rulemaking on issues relating to clean fill. Hence, the definition of "clean fill" appears in this final-form rulemaking unchanged from the current *Pennsylvania Code* version. Based on the recent release of the safe fill package for public comment, and an alternative proposal submitted by the Cleanup Standards Scientific Advisory Board, the Department intends to continue its evaluation of recommendations received. The Department will propose a new rulemaking package to address issues relating to clean fill.

"Dredged material."

On final-form rulemaking, the Board added language to clarify that material removed or dredged from an impoundment that received solid waste does not fall within the meaning of "dredged material". Dredged material typically refers to material excavated from waterways and ponds.

"Environmental Stewardship and Watershed Protection Act."

The Board included the citation for 27 Pa.C.S. §§ 6101–6113 (relating to the Environmental Stewardship and Watershed Protection Act) in this section, as this new law is referenced in a number of places in the final-form regulations.

"FAA."

The final-form regulations include a definition of "FAA," which is the Federal Aviation Administration of the United States Department of Transportation. This definition was added because new restrictions on the construction and operation of landfills near airports involve the FAA.

"Facility."

Two commentators suggested that the definition of "facility" should not include the term "beneficial use." The Board disagreed and left the definition as proposed. Materials being beneficially used are still considered waste and the area where the use occurs needs to be considered a facility for inspection purposes.

"Home self-care."

Two commentators objected to the definition of "home self-care." The objection is that, because of the growth in home healthcare, an exemption from the definition of infectious waste for wastes generated in the home would allow used sharps and other potentially infectious waste items to be disposed in the regular trash stream. The Board added this definition for clarification purposes only.

The definition of infectious waste has included an exemption for in-home generated infectious waste since 1988. However, the Department still recommends and encourages home healthcare providers to collect these wastes they generate through in-home care and transport the waste to their hospital or home-base for proper disposal. The Board declined to make additional changes to the definition of "home self-care."

"Leachate."

Two commentators suggested that the definition of "leachate" be amended to conform to the Federal definition, but the Board declined this suggestion because the current definition has been in effect since 1988 and provides an accurate description.

"Mobile infectious waste processing facility."

The Board added this definition of a "mobile processing facility" to clarify that the Department may issue general permits for both mobile and stationary infectious waste processing facilities.

"Municipal-like residual waste."

The Board deleted the proposed definition of "municipal-like residual waste" in the final-form rulemaking because commentators objected that the term was confusing and raised concerns about unacceptable wastes becoming authorized at municipal waste facilities. The term was likewise deleted from § 271.611 (relating to chemical analysis of waste).

"Perennial stream."

Three commentators suggested that a flow-based definition of "perennial stream" should replace the biological-based definition. The Board declined to make this change because the current definition is based on technical criteria, is less arbitrary in determining if a stream is perennial and has successfully been used in other Department programs. The definition now conforms to the definition for perennial stream in the residual waste regulations.

"Regional water table."

One commentator suggested a change to the definition of "regional water table." The Board did not make this change because the current definition adequately defines the term.

"Related party."

Two commentators suggested that the definition of "related party" be limited to persons with the responsibility or ability to direct or control activities relating to the processing or disposal of solid waste at a facility. The Board declined to make this change because even a party without the ability to direct or control activities can still significantly affect them.

"Risk-based standard."

On final-form rulemaking, the Board deleted the reference to "primary" MCLs to be consistent with the use of this term in the groundwater abatement sections of these regulations.

"Seasonal high water table."

Two commentators suggested that the definition of "seasonal high water table" be changed to conform to the Federal regulations. The Board declined to make this change because it would create unnecessary inconsistencies in the State program.

"Secondary contaminants."

On final-form rulemaking, the Board added a definition for "secondary contaminants," which refers to a substance for which a secondary MCL exists, and no lifetime health advisory level exists. This definition was added to define contaminants that may qualify, at closure, for an alternative point of compliance beyond the property boundary.

"Special handling waste."

Dredged material is being added to the definition of "special handling waste" because the variability of the physical and chemical characteristics may necessitate additional management considerations.

"Thermal processing."

The Board added the definition to clarify that the term "thermal processing" does not include incineration and autoclaving type facilities. This needed to be clarified, particularly for biological indicator spore monitoring found in the former § 283.402 (relating to infectious waste monitoring requirements), which is now § 284.321 of the final-form regulations.

"Unrecognizable infectious waste."

One commentator suggested that the size limitation for processed infectious waste under the definition of "unrecognizable infectious waste" be changed from a maximum size of 3/4 inch to an average size of 3/4 inch. The Board declined to make a change to this requirement because using an average size of 3/4 inch, as opposed to a maximum size of 3/4 inch, may result in recognizable waste satisfying this definition. The Board believes the maximum size specification is the best approach to ensure that the processed waste is unrecognizable.

"Waste."

The Board amended the definition of "waste" in the final-form rulemaking to clarify that as a general rule a material whose original purpose has been completed and which is directed to a beneficial use facility or is otherwise beneficially used is a waste. This amendment corrects an oversight by which the regulation had excluded materials that were beneficially used in certain circumstances from the definition of "waste" without having expressly included them. The final language makes clear the original intention of the definition. The exclusions remain in the definition.

"Wetlands."

The Board amended the definition of "wetlands" in the final-form rulemaking to make it consistent with the definition in § 105.1 (relating to definitions).

§ 271.2. Scope.

The Board updated subsection (a) by adding new Chapter 284 (relating to infectious and chemotherapeutic waste) to the list of chapters.

Subsection (b) lists wastes that are to be managed under Article VIII (relating to municipal waste) and regulated as if the wastes are municipal waste, regardless of whether the waste is a municipal waste or residual waste. The proposed revision to subsection (b)(3) had revised the phrase: "Sewage sludge, including sewage sludge that is mixed with other residual waste" to "Sewage sludge, including sewage sludge that is mixed with a small quantity of residual waste." This change was designed in part to remove the connotation that sewage sludge was residual waste, because it is not. Sewage sludge is, by definition, municipal waste. In mixtures of sewage sludge and residual waste, the sewage sludge

retains its character as municipal waste and the residual waste retains its character as residual waste. Two commentators objected to allowing sewage sludge mixed with "a small quantity of residual waste" to be managed as municipal waste because of concerns over toxicity and volume of the residual waste. To address these concerns, the Board deleted subsection (b)(3) entirely and addressed mixtures of sewage sludge and residual waste in greater detail in Subchapter I (relating to beneficial use). Under the final-form regulations, mixtures of sewage sludge and residual waste will only be permitted under Subchapter I, which now incorporates the relevant safeguards of Subchapter J (relating to beneficial use of sewage sludge by land application) and provisions concerning residual waste.

A new category of waste—waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material—has been added in subsection (b)(4) to the list of wastes that are subject to the municipal waste regulations. This waste primarily has characteristics that are generally found in the municipal waste stream.

One commentator asked for an expanded description of the term "autofluff" or a definition in § 271.1. In response, the Board defined the term in § 271.1.

§ 271.4. Computerized data submission.

A new subsection (b) has been added in the final-form rulemaking to authorize the Department to require data submissions electronically or on magnetic or optic storage media in a format specified by the Department. The language of subsection (b) was taken from § 287.4 (relating to computerized data submission) of the residual waste regulations and the title of this section was changed to read the same as the title to § 287.4.

A new subsection (c) was added to authorize the Department specifically to require a different scale on maps, reports and plans that are submitted electronically or on magnetic or optic storage media. Maps, reports and plans submitted in this format are capable of showing much more detail than paper maps, reports and plans, and the more detailed information can be accessed and used in many useful new ways when submitted in this format.

Subchapter B. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS
REQUIREMENT

§ 271.101. Permit requirement.

While the proposed rulemaking proposed deletion of subsection (b)(3) concerning clean fill, the Department decided not to make changes to the final-form rulemaking on issues relating to clean fill. Hence, subsection (b)(3) appears in this final-form rulemaking unchanged from the current *Pennsylvania Code* version. Based on the recent release of the safe fill package for public comment, and an alternative proposal submitted by the Cleanup Standards Scientific Advisory Board, the Department intends to continue its evaluation of recommendations received. The Department will propose a new rulemaking package to address issues relating to clean fill.

On final-form rulemaking, the Board retained the permit exemption for activities relating to the use of waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material if the waste is not hazardous. Due to problems associated with mismanagement of these materials, however, the final regulations include mandatory implementation of

best management practices. To assist persons who use this material, the Department will prepare a manual describing best management practices. A person may identify for Departmental approval best management practices, on a case-by-case basis, other than those identified in the manual.

On final-form rulemaking, new language has been added to subsection (c) that clarifies circumstances when the Department may require a person or municipality to obtain a permit, regardless of the exemptions outlined in subsection (b), based on harmful conduct.

§ 271.102. (Reserved).

This section has been relocated to § 284.2.

§ 271.103. Permit-by-rule for municipal waste processing facilities other than for infectious or chemotherapeutic waste; qualifying facilities; general requirements.

The written notice requirements that already existed for permits by rule for septage treatment facilities and mechanical processing facilities have proven helpful to the Department, so the Board added the same notice requirements to subsections (d), (f) and (h) for the processing of special handling waste at a captive processing facility, for on-site incinerators and for yard waste composting facilities. The captive processing facility notice requirement was limited to facilities processing special handling waste in order to avoid unnecessary notification by owners of processors that have little or no impact on the environment, such as home trash compactors.

EXISTING FACILITIES

§ 271.113. Closure plan.

Subsections (b) and (c) have been modified to delete references to § 271.111, which is now obsolete, and add a reference to this section. Relevant requirements pertaining to a closure plan for these older operations are now consolidated into this section.

The Board has modified proposed subsections (g) and (h) to clarify the remediation standards for older facilities that are subject to closure plan requirements under this section. Rather than repeating the standards in this section, subsection (g)(2) cross references final closure remediation standards in § 271.342. In addition, language has been added to subsection (h) that gives a person who completes closure plan requirements the opportunity to obtain final closure certification.

§ 271.114. Transition period.

Almost everything on earth is naturally radioactive to some degree, but most materials do not endanger the public health or safety or the environment. The final-form regulations establish a system for protecting the public (including municipal waste facility employees) and the environment from the improper disposal and processing of radioactive materials that could endanger the health and safety of the public or the environment. These requirements appear in each chapter of the regulations and are the result of public comments received on proposed § 273.214(c) (relating to measurement and inspection of waste). Section 271.114 has been added to establish a transition period for coming into compliance with the requirement to have the permit designate an area for vehicles in the event of the detection of waste containing radioactive material and the requirement to have the permit include an action plan specifying, among other things, procedures for monitoring for and responding to radioactive material entering the facility. The Depart-

ment's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, document number 250-3100-001, gives direction for developing action plans, monitoring for radioactive material in waste and preparing records and reports. A facility operator may adopt the standards and procedures in the guidance document even before the regulatory requirements that are transitioned under § 271.114 become applicable. An operator may also seek approval of an action plan and a designated area before the deadline established in this section.

GENERAL APPLICATION REQUIREMENTS

§ 271.122. *Form of application.*

The Board amended subsection (d) on final to conform it to the corresponding residual waste regulation, which requires that a Pennsylvania registered professional engineer supervise the preparation of a permit application and provide his seal to the design section of the application. The Board also clarified that the geologist who supervises the geology and groundwater sections of an application must be licensed in this Commonwealth.

§ 271.123. *Right of entry.*

Because the Department currently requests information required by subsections (b) and (c) on one form, the Board amended subsection (d) to require that all of the information on that form—landowner consent to waste activities and landowner consent to the Commonwealth's right to enter the permit area—be recorded.

A new subsection (e) has been added to indicate that subsequent landowners are deemed to have constructive knowledge of this Commonwealth's right of entry and the consent of solid waste activities on the land if the forms required by this section are properly filed at the office of the recorder of deeds in the county in which the proposed solid waste activity is situated.

§ 271.124. *Identification of interests.*

Subsection (b) was amended to include limited liability companies, a type of association recognized in the Pennsylvania Corporations Code since 1994. A correlating change was made to subsection (c) to include the members and managers of limited liability companies, who are the parallels of owners and officers in corporations.

Two commentators suggested that contractors should not have to be identified unless they have responsibility or ability to direct or control activities relating to the processing or disposal of solid waste. The Board declined to make this change because all contractors performing work at a facility should be identified and reliable. The same commentators suggested that limited partners and, sometimes, principal shareholders, should not have to be identified. The Board declined to make these changes because these persons may have the ability to control or direct activities at a facility, whether officially or not.

§ 271.125. *Compliance information.*

The Board updated subsection (a)(7) in the final-form regulations to include requirements for limited liability companies and partnerships. Now, any cross-ownership will be relevant, not just cross-ownership between corporate shareholders.

Two commentators suggested reducing the information that must be reported concerning legal proceedings and other jurisdictions' environmental laws. The Board declined to make this change because relevant information, which might otherwise not come to the Department's attention, is often brought to light in the types of actions

proposed for deletion by the commentators. Requiring applicants to describe applicable laws in other jurisdictions encourages thorough analysis by the applicant in advance of submitting a permit application and provides further useful information to the Department in its permit review.

§ 271.127. *Environmental assessment.*

A number of comments were received on the proposed changes to this section.

One commentator suggested that public and private facilities should be viewed differently in an environmental assessment. The Board did not make this change because the ownership of a facility does not automatically dictate any particular harms or benefits.

One commentator objected that the proposed "benefits and harms" test is vague and ambiguous and could be used to justify any result. Another commentator thought that the test should simply be one of mitigation, with no reference to benefits or balancing. The final-form regulation retains the balancing test for many reasons. The test is reasonable, takes into account input from and dialogue with interested parties, including the applicant, and involves close scrutiny of all factors by the Department. The environmental assessment, including the balancing test, carries out the Department's obligation under the Act SWMA to implement Article I, § 27 of the Pennsylvania Constitution, which mandates that the Commonwealth protect public resources. The test is designed to take into account the site-specific impacts the waste management facility may have on the specific location of the facility and other affected areas. Under Article I, § 27, the Department has been balancing harms and benefits for many years. Balancing harms and benefits finds support in case law.

One commentator thought the word "clearly" should be eliminated from subsections (c) and (d), and that social and economic benefits should not be reduced by social and economic harms. The Board retained both concepts because the balancing test is not a simple mathematical computation, so benefits must "clearly" outweigh harms in order to ensure that public resources are protected; and social and economic harms should be considered because they help to create a true picture of the social and economic impacts of the facility. To complete the picture, environmental benefits are also considered.

Several commentators suggested that the environmental assessment evaluation should be performed following Phase I of permit review and during technical review. The Board has retained the requirement that the assessment be performed in Phase I so that an applicant does not have to submit detailed design plans if the application will be denied based upon the environmental assessment. Subsection (h) provides an opportunity for further assessment under this section during Phase II if additional harms or potential harms are discovered at that point.

A commentator asked the Board to explain why the word "prime" has been deleted from the term "prime farmland." There are many categories of farmland that may be impacted by the location of a waste management facility. Some are more sensitive than prime farmland and others are not. This information is necessary for the Department of Agriculture and other agencies to evaluate the potential harms the facility may present to agricultural land.

A commentator stated that if subsection (c) is retained, the Board should not allow private parties to determine specific "known and potential harms." The response is

that the applicant must identify all known and potential harms and must evaluate all harms identified by itself, potentially affected persons, the Department and other agencies. Section 271.127 is designed to elicit information from affected parties as to their perceptions of the known and potential harms in order to ensure a comprehensive environmental assessment. Ultimately, upon review of the application and all other input received, the Department determines what the specific "known and potential harms" are.

The same commentator expressed concern that subsection (f), which is subsection (g) in the final-form regulations, would result in litigation if not every potentially affected person were consulted by the Department. The response is that this section describes the timing of the Department's evaluation of the environmental assessment. The timing is not new and should not create a new right since the same timing was described in subsection (b) before this section was revised by this rulemaking.

Several changes were made to the final-form regulations. The Board added "local parks" to the list of features in subsection (a) that an applicant must consider in determining the potential impacts of a proposed facility or modification to fill in the gap left by only listing state and Federal parks.

The Board added "airports" to the list of features in subsection (a) to clarify that if a proposed facility will have the potential of causing harm to aircraft arriving at or departing from an airport, the application will have to include a plan to mitigate the harm or potential harm.

The Board added a requirement to subsection (a) that an application contain all correspondence from any agencies to the applicant in regard to the environmental assessment in order to facilitate the Department's review of the environmental assessment.

The Board amended subsection (c) to clarify that harms and mitigation measures described in subsection (b) will be taken into consideration when the benefits and harms of the proposed facility are weighed. The Board similarly amended subsection (d).

The Board amended the language in subsection (f) regarding "need" for a facility. Under the previous structure, "need" had to be demonstrated as part of an applicant's demonstration of social and economic benefits. Under the final-form regulation, need may be considered as one kind of benefit, but is not necessary. It may be demonstrated in the sense that the proposed facility or expansion is needed by the public by showing, for example, a scarcity in disposal capacity which threatens the public health, safety or welfare. Simply increasing total capacity will not be a sufficient demonstration of need. Likewise, being provided for in a municipal waste plan does not mean that a proposed facility or expansion is actually needed, even if the applicant demonstrates that it will actually receive waste under the plan.

§ 271.128. Permit application fee.

The final-form regulations moves the fee for a minor permit modification from subsection (b) to subsection (c). Now, subsection (b) exclusively lists fees for modifications under § 271.144 (relating to public notice and public hearings for permit modifications), which are all major modifications, and subsection (c) addresses minor modifications. Subsection (c) also cross references § 271.222 (relating to permit modification) for clarity. All minor modifications, including onsite modifications authorized under § 271.222(c), will be subject to this fee.

PUBLIC NOTICE AND COMMENTS

§ 271.141. Public notice by applicant.

A commentator suggested that the public must be directly involved in all water issues and alternatives and options for remediation in both major and minor permit modification applications. The Board declined to amend this section in response because not all modifications pertaining to water issues need to go through the public notice requirements. Minor modifications would not be changes to the overall plan, but may involve such things as detailed changes in well design that do not affect the alternative chosen for remediation and will have no impact on public health or safety.

Another commentator noted that the requirement for display advertisements in subsection (a)(5) is frequently "met" through the use of legal notices. The commentator suggested specific regulatory requirements on the size of the advertisements and of the typeface that would result in more public access. The Board declined to regulate the advertisements in this manner, because the regulation as written does not authorize legal notices.

§ 271.144. Public notice and public hearings for permit modifications.

The Board received numerous comments on the proposed clarification to subsections (a)(2) and (b)(7) regarding average and maximum daily waste volumes. In response, the Board retained the proposed language in subsection (a)(2) but deleted "average or" from subsection (b)(7).

Several commentators requested the Board to explain the need to classify a change in average daily waste volume as a major permit modification and objected that these revisions will make permitting more time consuming, expensive and uncertain. The current regulation is written to require that a change in daily volume requires a major modification. The Department has applied this as requiring a major modification for changes in average and maximum daily volumes. The changes in the final-form regulation were included in order to address questions that had arisen in implementing this section. In addition to modifying the phased-in bonding for a facility, increasing the average daily volume may significantly change day-to-day operations at the facility and may impact the surrounding area. It is necessary to notify the public regarding this modification to determine if problems exist that were not identified or anticipated in the original application.

Several commentators urged the Board to delete the words "average or" from subsection (a)(2) because all potential "impacts" are based on the maximum daily tonnage. Significant operational changes may occur with increased trash flow on a daily basis, however. There is a need to provide the public opportunity to identify the actual problems that may be occurring or can be expected to occur that were not identified or anticipated in the original application.

One commentator specifically recommended only requiring a major modification under subsection (a)(2) if the average or maximum daily volume would increase by 10% or more. The Board declined this suggestion because a facility's size and operating procedures are often more determinative of the impacts from a change than is the amount of the volume increase.

One commentator suggested that only an increase in average daily volume (averaged over a week) should be considered a major modification. The commentator ex-

plained that waste receipts peak early in the week and a focus on weekly receipts would allow a facility to operate in accordance with the needs of its customers and allow waste-to-energy facilities to continue operating on a continuous basis. The Board deleted average daily volumes entirely from subsection (b)(7) because processing facilities will not be required to have an average daily volume, but the Board retained the need for a major modification for a change in the maximum daily volume.

Two similar comments were received concerning subsection (a)(3). The proposed amendment limits the instances in which a major permit modification will be required for changes in excavation contours or final contours, including final elevations and slopes, to those changes that result in increased disposal capacity or that impact groundwater isolation distances or groundwater quality. The commentators suggested that a major modification be required only if the change results in 6 months or more of increase in disposal capacity. In the final regulations, the Board retained the provision as amended in the proposed rulemaking because an increase in airspace or size could trigger operational changes at the facility.

Two comments were received concerning the proposed amendment to subsection (b)(1). The proposed amendment limits the instances in which a major permit modification will be required for changes in specifications or dimensions of waste storage or residue storage areas at municipal waste processing facilities to those changes that result in increased processing or storage capacity. One commentator objected that the provision is not necessary to promote a legitimate environmental or public health/safety goal and will make permitting more time consuming, expensive and uncertain. The other commentator suggested that the requirement should only apply when the increase is 10% or more. In the final-form regulations, the Board retained the provision as amended in the proposed rulemaking because any increase in specifications or dimensions of waste storage or residue storage areas could have a number of effects which the public should be able to comment on, including effects on day-to-day operations, impacts on the surrounding area, changes required to the erosion and sedimentation control plan or increases in the potential for offsite odors and other nuisances.

Subsection (a)(10) and (14) relate to change of owner or operator. The Board amended subsection (a)(10) and added subsection (a)(14) to ensure that a change in the owner or operator of a landfill will require a major permit modification if the party that is changing is not the permittee. If the party that is changing is the permittee, the change will require permit reissuance under § 271.221 (relating to permit reissuance).

The Board added subsection (a)(13), which requires a major modification to dispose of waste in areas that have reached final permitted elevations because reopening areas that have reached final permitted elevations may significantly affect the closure and postclosure construction activities that have been undertaken. In addition, the structural stability of the landfill must be reevaluated to account for the additional waste.

The Board added subsection (a)(15) to clarify that submission of a radiation protection action plan for Department approval will be considered an application for a major permit modification.

The Board deleted the proposed language "average or" from subsection (b)(7) because municipal waste processing facilities do not have average daily volumes.

The Board added identical provisions to the provisions it added in subsection (a) regarding change in owner or operator in new subsection (b)(8) and (9), relating to municipal waste processing facilities. The effect will be the same.

The Board added an identical provision to subsection (a)(15) regarding radiation protection action plans in subsection (b)(10).

PERMIT REVIEW

§ 271.201. Criteria for permit issuance or denial.

Several commentators suggested that the lead-in language in this section be revised to prohibit a permit application from being approved unless the "Department has determined" that the conditions in this section have been met. The Board declined to make this change because the current statement that a permit application will not be approved unless the "applicant affirmatively demonstrates" that the conditions are met means the same thing.

The same commentators suggested adding a paragraph that requires that the expected benefits from the facility clearly outweigh the anticipated harms or potential for harms. The Board included language like this in § 271.127 (relating to environmental assessment) rather than in this section.

A new paragraph (9) was added to prohibit a new landfill from operating if the landfill is within 6 miles from an airport covered by the April 5, 2000, Federal legislative amendment to 49 U.S.C.A. § 44718(d) (relating to limitation on construction of landfills), unless the Administrator of the Federal Aviation Administration has determined that exemption of the landfill from application of § 44718(d) would have no adverse impact on aviation safety. (*Wendell H. Ford Aviation Investment and Reform Act for the 21st Century*, Pub. L. No. 106-181, § 503, 114 Stat. 61 (2000), amending 49 U.S.C.A. §§ 44718(d) and 46301(a)(3).) Section 44718(d) expressly prohibits the construction of a new landfill within 6 miles of a public airport that has received grants under 49 U.S.C.A. Chapter 471 and is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for 60 passengers or less. The Board's regulation is designed so that the states' aviation agencies and the FAA—not the Department—will determine which airports are covered by the legislation. Under the Federal legislation and the final-form regulations, the FAA exemption is only available if the aviation agency in the state in which the airport is located requested the FAA to exempt the landfill from the construction prohibition in the new Federal provision. The Board has added this provision to the municipal waste regulations to ensure that no new landfill is built if the state aviation agency is unwilling to seek an exemption and FAA is unwilling to provide an exemption from the construction prohibition of the Federal statute.

§ 271.202. Receipt of application and completeness review.

The Board amended the title of this section to reflect changes in the section.

One commentator recommended that the Board clarify subsection (a)(2) of the proposed rulemaking to allow either party to request that the Department impose a timeline if an agreement is not reached, rather than using the proposed language that allows the Department to determine an appropriate timeline "if the parties are unable to reach agreement." The commentator felt that

the proposed rulemaking is unclear as to who makes the decision that the parties are unable to reach agreement and that parameters for making the decision would be helpful. The Board retained its proposed language on this point because it is not possible to set specific parameters for making the decision until the reasons why the parties are unable to reach an agreement are known. The procedure in the final-form regulations represents current Department practice as set forth in the "Money-Back Guarantee Permit Review Program Expansion," published in 26 Pa. B. 3038 (June 29, 1996) and is also incorporated in technical guidance developed in response to the Governor's Executive Order 1996-5 (relating to municipal waste facilities review program).

Under the final version of this section, a permit application for a new facility or a modification that would result in an increased average or maximum daily waste volume, increased disposal capacity or expansion of the permit area will not be considered to be "received" by the Department until the Department, applicant and municipal officials have met to discuss the proposed application. (Subsection (b)(1).) For purposes of this section, the term "municipal officials" includes representatives of local municipalities, including the host municipality and county, municipalities adjacent to the host municipality, municipalities located within 1 mile of the permitted or proposed area, other municipalities that demonstrate that they may be adversely impacted by the proposed project and municipalities located along the approach routes. (Subsection (g).) This paragraph builds on procedures already in place under the Department's guidance document entitled "Local Municipality Involvement Process," document no. 254-2100-100, which was developed under the Governor's Executive Order No. 1996-5 to increase public involvement in the permitting process.

Subsection (b)(2) remains much as it looked on proposal, except that resource recovery facilities have been added. This subsection requires an alternative project timeline to be developed for a municipal waste landfill, construction/demolition waste landfill or resource recovery facility permit application, regardless of whether requested under Act 57 of 1997 (section 1935-A of the Administrative Code (71 P. S. § 510-35), added by the act of November 26, 1997 (P. L. 530, No. 57)). Act 57 mandated an alternative project timeline for municipal waste landfill and resource recovery facility permit application reviews, if an applicant so requested. The legislation was silent as to construction/demolition waste landfills, but the Department's practice for many years under the money-back guarantee permit review program has been to require an alternative timeline for these facilities, as well as for municipal waste landfills. The Department's money-back guarantee permit review program will be updated to reflect these new regulatory requirements. The final-form regulations require an alternative timeline for these three types of facilities because these facilities tend to invoke the most public concern and are therefore the best candidates in the municipal waste program for an alternative project timeline.

Subsection (b)(2) contains two additional amendments in the final rulemaking. First, the term "host community" has been changed to "host county and host municipality." This amendment clarifies the necessary parties to the negotiation and is consistent with Act 57. Second, the last sentence has been amended to clarify that the announcement referred to is that required by § 271.142 (relating to public notice by Department).

Reference to alternative timelines was deleted from subsection (c) because alternative timelines are now addressed in subsection (b).

Proposed subsection (f) indicated that the Department would not accept a permit application for an expansion if more than 5 years of disposal capacity remained at the landfill at the time of submission of the permit application. On final, this subsection has been revised to clarify that it applies to municipal waste landfills and construction/demolition waste landfills. It has also been clarified to indicate that it only applies to permit applications for expansions that will result in an increase in capacity. This would allow an application to be submitted that would shift the remaining capacity from one part of the site to another. This subsection was also amended to clarify how remaining disposal capacity will be calculated. Under the final regulation, the calculation of remaining disposal capacity will be based upon information submitted in the facility's most recent annual report or equivalent information.

Several commentators objected that a 5-year limitation on expansion applications was unnecessarily restrictive. The Board disagrees because this time period is necessary to avoid permitting facilities that are technologically obsolete by the time they are utilized. The 5-year limitation also enables the more efficient use of Department staff who review permits. These commentators also suggested that disposal capacity should be measured utilizing the maximum daily tonnage in the facility's permit. This would not be appropriate because most landfills do not accept their maximum daily tonnage on a daily basis. Instead, the remaining capacity will be based upon the data submitted by the operator as part of the annual report. By using the annual report information, the calculation will be based upon factual data and updated on an annual basis.

New subsection (g) includes definitions of the terms "local municipalities," "approach routes" and "municipal officials," as those terms are used in this section.

§ 271.203. Review period.

Two commentators suggested that an alternative project timeline be applied to resource recovery facilities as it is to municipal waste landfills and construction/demolition waste landfills. The Board has amended subsection (a) in this fashion to include resource recovery facilities because these facilities will now have alternative project timelines, under the amendments to § 271.202 (relating to receipt of application and completeness review).

GENERAL PERMIT RESTRICTIONS

§ 271.211. Term of permits.

In response to public comment, the Board corrected an error it made in the proposed rulemaking when it inadvertently deleted the word "no" at the beginning of subsection (c). The word "no" appears in the final-form rulemaking.

The Board amended subsection (d) to require an operator to provide a summary of changes to the operations since approval of the initial permit or latest major permit modification when the Department conducts its 5-year review of the facility. This requirement was added because it provides the Department with the information in a format that will facilitate the review of the existing permit.

One commentator suggested that the public should be informed of applications for new municipal waste facil-

ities through a newspaper notice that sets out the applicant's compliance history, sets a 30-day comment period and announces the opportunity to request a hearing. The regulations were not changed in response to this comment because newspaper notice of a permit application is already required to be published by the applicant under § 271.141 (relating to public notice by applicant). That notice must include a 60-day comment period and state that the Department will accept comments from the public. The applicant's compliance history must be submitted with the application. The compliance history is a lengthy document and is available for review by anyone during the public comment period. Under § 271.143 (relating to public comments), the Department may schedule a hearing if there is significant public interest, so the opportunity already exists to request a hearing.

§ 271.212. Conditions of permits.

The proposed provisions in paragraph (4) required the permittee to notify the Department after the transfer of a controlling interest in the permittee. The final-form regulations clarify that this notification should occur when there is a transfer of a controlling interest in the owner or operator of the facility, regardless of whether that party is the permittee. The final-form regulations also clarify that if the transfer of controlling interest triggers a major permit modification or permit reissuance, notification under this section is not required. Paragraph (4) is not intended to apply to changes in managers or directors, which will be described in the permittee's annual report.

PERMIT REISSUANCE, MODIFICATION AND RENEWAL

§ 271.221. Permit reissuance.

One commentator opposed the revision to subsection (a), stating that existing permits should be grandfathered. The Board retained the revision because it merely clarifies existing Department practice.

§ 271.222. Permit modification.

In the proposed rulemaking, subsection (c) had been added to authorize the Department to approve onsite a minor modification for the construction of liner systems or of erosion and sedimentation control devices if impracticable to comply with the standard procedures for minor modifications and if the modification would improve the permitted design. The Board received several comments on this proposal.

One commentator recommended that the regulation require an onsite modification to be followed up in writing within a short time period to avoid later disagreements over what specific modification was approved or the extent of the modification. The Board agrees with this comment and has revised the regulation to authorize the Department to issue a conditional approval onsite. The approval will be conditioned on the applicant submitting the supporting design modifications and fee within 5 working days.

Two commentators requested the Board to amend this regulation to allow onsite approvals for other systems too, including final cover, gas management and leachate management systems. The Board declined to make this change. The onsite conditional approvals are limited to liner system and erosion and sedimentation control systems because minor field changes have historically been necessary during construction of these systems and there is not always sufficient time available to use the existing minor permit modification process. The onsite minor

permit modification process cannot be used in instances where background design or other information is necessary for review by the Department prior to approval or when sufficient time exists for the modification to be done through the existing minor permit modification process.

§ 271.223. Permit renewal.

The proposed rulemaking did not contain a change to this section but two comments were received that requested that resource recovery facility permit terms should be automatically extended if the permit renewal application was filed timely.

The Board did not include an automatic extension in this regulation, but amended the regulation to require earlier submission of permit renewal applications so that there will be adequate opportunity for timely review by the Department. The final-form regulations have been amended to require a processing facility to submit a permit renewal application 270 days prior to the expiration date and a disposal facility to submit a permit renewal application at least 1 year before the expiration date. To address applications received near the effective date of the final-form regulations that could not meet the new requirements, the final regulation provides that renewal applications for permits that will expire within 270 days and 1 year, respectively, of the effective date of the final rulemaking need only be submitted within 180 days of their expiration date.

Subchapter D. FINANCIAL ASSURANCES REQUIREMENTS

GENERAL

§ 271.301. Scope.

The Board deleted subsection (e) in the final-form rulemaking because the Environmental Stewardship and Watershed Protection Act repealed the statutory requirement in Act 101 upon which it had been based.

BOND AND TRUST REQUIREMENTS—TYPES

§ 271.321. Special terms and conditions for surety bonds.

Subsection (b) has been modified on final-form rulemaking. First, language has been deleted to be consistent with a repealer in the laws relating to casualty insurance. See 40 P. S. § 730, which provided for foreign companies, associations and exchanges to do business through resident agents, and which was repealed December 21, 1998 (P. L. 1108, No. 150).

Secondly, language has been added that requires surety bonds for facilities permitted after the effective date of these regulations and permit modifications issued after the effective date of these regulations to be listed in Circular 570 of the United States Department of Treasury. If the surety is removed from the circular, the bond issued by the surety must be replaced. The Federal government uses different, more comprehensive standards to qualify a surety than the Insurance Department. The listing and bond replacement requirements are consistent with Federal requirements for both municipal waste landfills and hazardous waste landfills.

BOND AND TRUST REQUIREMENTS—AMOUNT

§ 271.331. Bond and trust amount determination.

Three commentators suggested that the bond amount should be determined based upon the net amount placed in the site-specific postclosure trusts because the funds in the trusts are intended for conducting identical activities as those in the bond amount determination. The Board did not make this change because the bond amount is

calculated according to the requirements of the SWMA and does not allow for diminution by amounts in a trust fund.

§ 271.332. Bond and trust amount adjustments.

On final-form rulemaking, the Board added language to subsection (b)(2) that allows the Department to require additional bonding at the time of a bond replacement if the bond being replaced is inadequate to protect human health and the environment.

BOND AND TRUST REQUIREMENTS—RELEASE

§ 271.341. Release of bonds.

The Board changed the phrase “completion of a stage of closure” in subsection (b)(3) to “completion of a measure carried out in preparation for closure” in order to avoid confusion, as “closure” is the point at which the entire facility permanently ceases to accept waste. Areas of the facility may reach permitted final elevations and may not be used for further waste disposal during the operation, but these areas are ultimately integrated together when the entire facility closes.

In subsection (g)(2), a misprint has been corrected. The words “or monitoring” were inadvertently printed instead of the proper language, “and to maintain.”

Two commentators questioned why any money has to remain in a site-specific post closure trust if the bond amount is adequate to cover the cost of long-term remediation. The question has largely been mooted by the passage of the Environmental Stewardship and Watershed Protection Act in 1999, which authorized the host county to spend the money in a site-specific postclosure trust for “growing greener” purposes consistent with that act. As before, the landfill may only have access to the money—while it remains in the trust—for emergency measures and remedial actions for which the Department has authorized release of the money in writing.

§ 271.342. Final closure certification.

For final closure certification, the Board consolidated all remediation standards for facilities. With the introduction of 40 CFR Part 258 (relating to criteria for municipal solid waste landfills) in 1993 and Act 2 in 1995, it was necessary to clarify which remediation standards apply to landfills and other facilities at the time of final closure certification. Subsection (b)(2) identifies the remediation standards that apply to municipal waste landfills permitted on or after the effective date of these regulations. With the exception of MCLs (discussed in § 273.287 (relating to abatement plan)), the standards for municipal waste landfills mirror the Federal requirements. Paragraph (3) identifies the remediation standards that apply to municipal waste landfills that received waste between October 9, 1993, and the date these regulations become effective. The regulations for these landfills continue to include any remediation standards previously identified in a closure plan. If none was identified, the remediation standards in subparagraph (b)(2) will apply. Paragraph (4) applies to all other facilities, including facilities other than municipal waste landfills. Remediation standards relating to Act 2 will apply.

On final-form rulemaking, the cross reference in subsection (b)(2)(iv)(A) to a *Federal Register* cite has been deleted. Although, the Department may consider the documents cited on proposed in its guidelines, the reference to Federal guidelines here was inadvertent.

On final-form rulemaking, the Board added a new subsection (c) for facilities other than municipal waste

landfills that allows the movement of the point of compliance for secondary contaminants beyond the property boundary up to a water source with approval by the Department. This language has been added to provide some relief for the remediation of contaminants that do not pose a public health threat.

The Board added a new subsection (i) on final-form rulemaking that defines the term “property boundary” as it is used in this section. The definition clarifies a point in time when the point of compliance cannot be extended by purchasing additional property to avoid remediation.

§ 271.343. Withdrawals from municipal trust.

A numerical cross reference has been updated to reflect changes in the numbering within the section cross referenced.

Subchapter E. CIVIL PENALTIES AND ENFORCEMENT

CIVIL PENALTIES

§ 271.413. Assessment of penalties—minimum penalties.

On final-form rulemaking, the Board added language to subsection (d) to clarify an ambiguity regarding the minimum penalty for a person that applies sewage sludge to an area that is not permitted. The new language makes it clear that the \$1,000 fine is applied to a portion of land up to an acre.

Several commentators suggested that the first sentence of proposed subsection (j) lacked clarity because it is not clear whether an “administrative order” or “another abatement order” would provide the “abatement period set in the order.” Two of these commentators also asked that subsection (j) be deleted because it is confusing as to which solid waste activities it would cover and the commentators expressed concern about whether the time frame the Department would set for compliance would be reasonable or practical. These two commentators suggested a replacement provision allowing the Department to reduce or eliminate penalties for violations discovered by the operator under a voluntary system of audits and inspections conducted by the operator, provided the violation is promptly reported to the Department and voluntarily and promptly corrected by the operator.

The Board did not amend or delete this provision in response to these comments. This provision was in place for many years before it was inadvertently deleted in 1997, and it is simply being reinstated here. As the provision is structured, the word “order” in the phrase “abatement period set in the order” refers to either an administrative order or other abatement order, so amendment for clarification is not necessary. A majority of the orders issued by the Department are cessation orders, but this section includes all orders. The \$1,000/day penalty provides economic incentives for compliance with orders. If the regulated entity does not agree with the Department’s assessment and decision, the entity may appeal the decision and apply for a supersedeas. The final-form regulations do not include authorization for the Department to reduce or eliminate penalties for self-reported violations because the regulatory economic disincentive is important in compelling compliance. With regard to the penalty established in subsection (j), a violator should not be excused for continuing to cause violations that were already the basis of a cessation or abatement order against the violator.

ENFORCEMENT

§ 271.421. Administrative inspections.

The Board decided to retain the original language in subsection (b)(1)(iv) which requires the Department to inspect sewage sludge land reclamation facilities at least twice a year. While the proposed modifications to subsection (b) did not prohibit the Department or its agents from inspecting facilities on a more frequent basis, maintaining the current twice a year minimum is useful to address increased public concerns regarding the use of sewage sludge for land reclamation activities.

Subchapter F. DEMONSTRATION FACILITIES

§ 271.501. Scope.

One commentator stated that the proposed amendment to this section is not clear as to the permit requirement. Two commentators stated that demonstration projects need more public scrutiny and more regulation. The Board has retained the proposed language, which allows the demonstration of new or unique technology at permitted facilities through a modification to the permit, where significant controls exist. The demonstration of new or unique technology will be able to be accomplished through a permit for a demonstration facility, which will require public notice under § 271.141 (relating to public notice by applicant) or through a modification to an existing disposal or processing facility permit. The latter may be accomplished through a major or minor modification, which receive differing degrees of public notice. Regardless of whether the demonstration is reviewed as a major or minor modification, operation of the facility may not impact public health or the environment.

§ 271.502. Relationship to other requirements.

One commentator insisted there should be no waiving of rules applicable to permit applications. The Board retained the proposed language, however, because flexibility in the approval process is necessary to allow new technology to be tested adequately. The sites are carefully monitored and evaluated. The Board added a requirement that the public notice requirements of § 271.141 (relating to public notice by applicant) may not be waived or modified.

Subchapter G. RESIDUAL WASTE

ADDITIONAL APPLICATION REQUIREMENTS

§ 271.611. Chemical analysis of waste.

In the final-form rulemaking, the Board added a new subsection (a)(1)(v). This subparagraph requires an application for disposal of residual waste or special handling waste at a municipal waste landfill or construction/demolition waste landfill to include a demonstration that the waste meets the requirements for disposal at the facility. Some wastes may not be accepted at the facility due to restrictions in the regulations, the permitted waste acceptance plan or the permitted operating plan. It is necessary for the operator to demonstrate that the disposal of the waste is consistent with the disposal restrictions in the regulations and approved permit.

One commentator suggested that subsection (a)(4) should be amended to apply to processing and disposal facilities, not just disposal facilities. The Board made this change by deleting the word "disposal."

The proposed reference to "municipal-like-residual waste" in subsection (a)(4)(ii) was deleted in the final-form rulemaking in response to public comments that it was too confusing. New language is intended to clarify that the evaluation required by this subsection may be

waived or modified if the applicant demonstrates that additional analysis is not necessary to determine that the waste can be received without adversely affecting the effectiveness of waste processing or disposal operations, established emission and wastewater discharge limits, liner systems, leachate systems or, at an unlined construction/demolition waste landfill, the attenuating soil base.

§ 271.612. Source reduction strategy.

The Board received two public comments on the proposed revision to this section. One commentator suggested that the regulations should not require a processing or disposal facility to obtain and submit to the Department copies of source reduction strategies because the generators already submit this information to the Department. That is not the case, however: the residual waste regulations do not require generators to submit these reports routinely. The other commentator objected to § 271.612 requiring submission of the generator's source reduction strategy if the waste is to be used as daily cover. The Board retained the provision as proposed, however, because the goal of the source reduction strategy is to reduce the volume of waste generated. Using the waste as landfill cover does not reduce the volume of waste generated nor of waste disposed.

Subchapter H. (Reserved)

This subchapter has been deleted and moved to Chapter 284, Subchapter B (relating to general permits).

GENERAL PROVISIONS

§§ 271.711—271.712. (Reserved).

These sections have been relocated to §§ 284.101 and 284.102.

ISSUANCE OF A GENERAL PERMIT

§§ 271.721—271.725. (Reserved).

These sections have been relocated to §§ 284.111—284.115.

CONTENT OF GENERAL PERMITS AND WAIVERS

§§ 271.731—271.732. (Reserved).

These sections have been relocated to §§ 284.121—284.122.

REGISTRATION AND DETERMINATION OF APPLICABILITY

§§ 271.741—271.744. (Reserved).

These sections have been relocated to §§ 284.131—284.133, except for § 271.744, which has been deleted.

Subchapter I. BENEFICIAL USE

SCOPE

§ 271.801. Scope.

Subsection (a)(2) has been amended on final to create an exception to this subchapter's permitting restriction on the land application of sewage sludge. This change is made in concert with the deletion of § 271.2(b)(3) (relating to scope), described above. Under the amendment to § 271.801(a)(2), sewage sludge mixed with residual waste may not be permitted under Subchapter I except as provided in § 271.821(b)(6) (relating to application for general permit). As before, a general or individual permit for the beneficial use of sewage sludge not mixed with residual waste will be issued only under Subchapter J (relating to beneficial use of sewage sludge by land application).

GENERAL PERMIT FOR PROCESSING OR BENEFICIAL USE, OR BOTH, OF MUNICIPAL WASTE AUTHORIZATION AND LIMITATIONS

§ 271.811. Authorization for general permit.

Subsection (a)(1) was amended on final rulemaking to correct an oversight in the existing regulations. The language is taken from § 287.611 (relating to authorization for general permit) of the residual waste regulations, which is the counterpart to this municipal waste section, and should have been included in this subchapter originally.

The Board amended subsection (e) to clarify that a general permit for processing or beneficial use of combinations of sewage sludge and residual waste shall be issued only under this subchapter. This clarifies which regulations apply to applicants proposing the beneficial use of mixtures of sewage sludge and residual waste.

The Board amended subsection (g) to state that a general permit for the beneficial use of sewage sludge by land application will not be issued under Subchapter I except for general permits in which sewage sludge is mixed with residual waste.

One commentator offered the opinion that the proposed revision to subsection (g)(5) required a complete rewrite because it was difficult to comprehend. Another suggested that the provision should allow for mitigating circumstances. The Board does not agree with either suggestion. This provision has been added to clarify that a general permit for beneficial use will not be issued for the use of materials at permitted resource recovery or disposal facilities. Materials used during construction or operation at those facilities need to be identified and evaluated as part of the permit application. It is necessary to modify the permit at a waste management facility to ensure the wastes proposed for use will not affect the design or operation of the facility. The final-form regulations maintain the existing requirement for an equivalency review for such an approval.

ISSUANCE OF GENERAL PERMITS

§ 271.821. Application for general permit.

The Board changed the phrase "municipal waste" to "waste" in subsection (b)(1) because the analysis required in this subsection is needed for residual wastes as well as municipal wastes when residual waste is blended with municipal waste.

Subsection (b)(5) has been added on final to address mixtures of municipal and residual waste. This provision was taken from § 287.621 (relating to application for general permit). An applicant for a general permit or for coverage under a general permit under Subchapter I must now demonstrate that all of the components of the mixture have a beneficial use. This applies to processing permits as well as beneficial use permits.

The Board added subsection (b)(6) in the final-form rulemaking to regulate more closely the land application of sewage sludge mixed with residual waste. In order to obtain a general permit for land application of sewage sludge mixed with residual waste, an applicant will have to meet all of the requirements of this subchapter, including the applicable requirements for the residual waste component, and will also have to meet relevant requirements of Subchapter J (relating to beneficial use of sewage sludge by land application) to ensure the quality and safe application of the wastes to be land applied. The requirements in subparagraph (i) are taken from § 271.902 (relating to permits and direct enforceability),

which is in Subchapter J; they are modified slightly to include a reference to residual waste. The requirements in subparagraph (ii) are taken directly from other specific sections in Subchapter J.

Subsections (c) and (d) were amended on final to identify a permit application fee of \$2,000 for issuance of a general permit that involves the mixture of residual waste and municipal waste.

§ 271.832. Waiver and modification of requirements.

The Board added language on final-form rulemaking to subsection (b) that clarifies the Department's intention not to waive the permit application requirements in § 271.123 pertaining to the Commonwealth's right of entry and the landowner's consent to solid waste activities. Although the requirements of this section cannot be waived, the Department may modify the requirements. Circumstances relating to the imminent sale of property present an example of when the Department has modified the requirements in an effort to work with the existing and future landowners to meet the regulatory obligations of a landowner.

The Board also amended subsection (b) on final rulemaking by deleting reference to Subchapter H, because Subchapter H has been relocated to Chapter 284, Subchapter B.

CHAPTER 272. MUNICIPAL WASTE PLANNING, RECYCLING AND WASTE REDUCTION

Subchapter A. GENERAL

§ 272.1. Scope.

The Board deleted the phrase "host municipalities" from the scope section because this subchapter no longer involves rights or responsibilities of host municipalities, in light of the passage of the Environmental Stewardship and Watershed Protection Act in 1999. Most of the other changes made to this subchapter on final are the result of that act.

Subchapter B. HOST COUNTIES

§ 272.101. County withdrawals from trust fund.

The Board has deleted the requirement to establish new trust funds in subsection (a) since the site-specific post closure fee that funds these trusts has been eliminated by the Environmental Stewardship and Watershed Protection Act. Language has been added to allow host counties to withdraw funds from the trusts for purposes consistent with that act. Similarly, subsections (b) and (c) have been deleted to comply with the Act.

§ 272.102. Trust requirements.

Language has been added in subsection (a) to clarify the section in response to the Environmental Stewardship and Watershed Protection Act. The lead-in to subsection (a) has been changed because this section no longer requires trust funds to be established. Subsection (a)(1) has been deleted because under the ESWPA the requirement for establishment of these trusts has been eliminated and the potential utilization of the trusts has been expanded. Two provisions in subsection (a)(3) (now subsection (a)(2)) have been deleted because counties are no longer required to establish the trusts and the language regarding spendthrift trusts is duplicative of existing language. Language in subsection (a)(4) (now subsection (a)(3)) has been deleted because it is duplicative of existing language in the trust agreements. Language has been added to subsection (a)(5) (now subsection (a)(4)) to clarify that payments that were due under Act 101, but have not yet been made belong in the trust, and were

required for waste received until January 1, 2000. Language has been deleted from paragraph (5) since payments are no longer required to be paid into the trust quarterly, but the requirement for a quarterly statement of trust account transactions remains since the trusts are still in place.

The Board deleted subsection (f) because the trusts are no longer being established as a result of the ESWPA.

§ 272.103. Failure to make payment.

As with § 272.102, the Board revised this section to reflect the fact that regular payments are no longer expected to be made to the trusts, but that delinquent payments are still owed.

§ 272.104. Operator withdrawals from trust fund.

The Board added the word operator to the title of this section to clarify what withdrawals from the trust were covered in this section.

The Board deleted language in subsection (a) which is no longer relevant because of the ESWPA.

The Board amended subsection (b) to clarify that this subsection addresses money paid over to the operator. The Board added the qualification that was previously found in § 272.102(a)(1), that such payment may only be made for remedial measures and emergency actions required by the Department for prevention or abatement of adverse effects on the environment. This language previously existed in Act 101, under which these regulations were first drafted, and now exists in the ESWPA.

Subsection (c)(4) has been modified because the trusts are no longer available only to the facility, but also to the host county. An additional requirement has been added in subsection (c)(6) to assure that the operator does not have the financial ability to perform remedial measures or emergency actions before a withdrawal from a trust is approved. This includes the exhaustion of the bond that has been posted for the closure and post closure care of the facility. For certain old, closed dumps that had no bond or a bond less than \$10,000 and which have not been abandoned, special provision is made in subsection (f).

A modification has been made to subsection (d) to clarify who is making the withdrawal.

Modifications have been made to subsection (f) to clarify that the trustee shall make moneys available for those sites that closed shortly after April 8, 1988, for the purposes designated in the proposed regulations. It clarifies that a facility with a bond of less than \$10,000 may qualify for moneys and the facility must not have been abandoned. (Abandonment of trust is addressed in § 272.107.)

Subsection (g) has been amended to clarify who is making the withdrawal.

§ 272.105. County withdrawals from the trust fund for administering the trust fund.

This section has been retitled to clarify the purpose of these withdrawals from the trust fund.

Subsection (a) has been amended to reflect the fact that establishment of site-specific postclosure trusts is no longer required.

Text of subsection (b) has been deleted due to the new authority for a county to withdraw moneys from a trust upon request of a trustee for purposes authorized by the ESWPA.

Proposed subsection (c), which is labeled subsection (b) in the final-form regulations, has been amended to delete the requirement for establishment of new trusts as in subsection (a). In addition, this subsection in the final-form rulemaking restates and embodies the revision that was proposed to subsection (d), which allowed the county's administrative fee to be based on all of the moneys in the trust. The final sentence has been deleted because it now appears in the new subsection (c).

Subsection (d) has been deleted because the payments to the county are governed by language retained in subsection (b). The second sentence has been deleted because it conflicts with the definition of deposits which now includes earnings and profits of the trust.

New subsection (c) has been added to clarify the requirement, as on proposed, that, after the trustee receives certification of closure, a county may not be reimbursed more than the lowest of its actual costs, 0.5% of the moneys in the trust fund or the earnings and profits from the trust during the billing period. This section seeks to protect the corpus of these trusts from being depleted by administrative charges.

§ 272.106. Termination of trust.

The section has been retitled to be consistent with its content.

Subsection (a) remains unchanged from the proposed rulemaking.

Subsection (b) remains unchanged from the proposed rulemaking with the exception of the deletion of the last sentence. Termination of the trust fund other than after final closure certification is now addressed in new subsection (d).

Subsection (c) has been amended to conform with the ESWPA which allows the county to receive the remainder of the trust for use as authorized by that act.

Subsection (d) has been added to allow termination of the trust when all moneys have been withdrawn and paid out.

Subchapter C. MUNICIPAL WASTE PLANNING PLAN CONTENT

§ 272.221. Scope of plan.

The cross reference to § 272.211(b) has been deleted from subsection (a) because it no longer exists.

§ 272.223. Description of waste.

The proposed rulemaking added construction/demolition waste (other than waste from demolition of an industrial site) to the list of wastes described in subsection (b) that a county must specifically address in describing the waste generated in the county. One commentator questioned adding construction/demolition waste to this list and asked why other wastes, like tires and appliances containing CFCs, are not also added. Construction/demolition waste is added to the list because generation and recycling opportunities for it are increasing, so counties should become aware of the magnitude of this component of the waste stream within their borders and its recycling potential. Furthermore, the EPA is considering adding construction/demolition waste to the list of materials it uses to compare recycling progress from state to state, so county generation and recycling data will become even more important. The other wastes suggested by the commentator are not included because they are included in existing subsection (e), which encourages counties to address them, at the counties' discretion.

Another commentator believed that adding construction/demolition waste to a county plan would require a substantial plan revision. This will only be true if the county intends to provide capacity assurance for construction/demolition waste and did not do so in its previous plan. Of course, even if a plan revision is not required to be substantial, a county may choose to follow the substantial revision process.

A new paragraph was added to subsection (c) to clarify the planning requirements for construction/demolition waste. That paragraph requires an estimate of the amount of construction/demolition waste currently generated in the county, that will be generated in the county within the next 10 years, that is currently recycled and that could be recycled during the next 10 years.

The recycling rate in subsection (d)(3) was changed from 25% to 35% to reflect the Commonwealth's goal established by proclamation of the Governor in 1998.

§ 272.224. Description of facilities.

A new paragraph (4) was added to subsection (a) to require counties' plans to identify and describe the recycling capabilities of the facilities at which the county's municipal waste is currently being disposed or processed. This requirement is intended to provide a more complete understanding of the recycling capabilities of the facilities and the potential for recycling the waste generated within each county.

§ 272.227. Selection and justification of municipal waste management program.

The proposed rulemaking confirmed that the regulations do not require a county to select the lowest bid when selecting facilities for the county's municipal waste management plan. One commentator suggested a clarification, which the Board adopted. The final-form regulations explain that the county does not have to select the alternative with the lowest cost.

The Board added a new subsection (d), which explains that a landfill or resource recovery facility selected by a county for capacity assurance shall be considered "provided for" in that county's plan under section 507 of Act 101. This change was made in response to a commentator's suggestion that § 273.139(b)(1) (relating to relationship to county plans) be incorporated into this section.

§ 272.228. Location.

One commentator suggested that this section should apply to transfer facilities so that they are regarded equally with landfills and resource recovery facilities. The Board declined to modify this section because the section already applies to processing facilities, which include transfer facilities. However, since a county is required to assure capacity for the ultimate disposal (that is, landfilling) or processing (that is, resource recovery) of the waste, if a county designates transfer facilities it must also designate a facility for the ultimate disposition of the waste.

PLAN REVIEW PROCEDURES

§ 272.244. Departmental review of plans.

The provision stating that a nonsubstantial plan revision will be deemed approved within 30 days of receipt by the Department, unless the Department responds in writing, was moved to subsection (a) from § 272.252 (relating to development of plan revisions), because it applies to the Department's review of a plan, not a county's development of a plan.

PLAN REVISIONS

§ 272.251. Submission of revisions.

A commentator noted that the brackets in the proposed rulemaking inadvertently eliminated paragraph (2). Reformatting on final corrects that error.

§ 272.252. Development of plan revisions.

Subsection (f) was deleted in the final-form rulemaking because this provision already appears in § 272.244 (relating to Departmental review of plans). Subsection (g) was deleted and moved to § 272.244. A new subsection (f) was added to explain that even if the Department does not determine a plan revision to be substantial, a county may still treat it as though it is substantial.

Subchapter D. GRANTS

GENERAL PROVISIONS FOR AWARDING GRANTS

§ 272.314. Limits on Department's authority to award grants.

A minor amendment to subsection (b)(3) is intended to clarify that prior reimbursements are related to the expenses being requested, not other expenses that might have been requested at other times.

Subsection (e) was amended to allow a grant offering to lapse if the offeree or the Department determines that the grant funds will not be utilized. This flexibility will enable others to obtain grant moneys that otherwise could be unnecessarily tied up.

§ 272.316. Performance audit.

The Board deleted the proposed language authorizing the Department's review of a disbursement request to serve as a performance audit because the scope of review required in a performance audit exceeds that performed by the Department in reviewing a disbursement request. The Board also deleted the sentence that prohibited a grant under this subchapter from being used to pay for a performance audit. Specifically, if a county recycling coordinator is qualified to perform a performance audit of a municipality's use of grant money given under this subchapter, the performance of that audit may be a reimbursable expense under § 272.341 (relating to scope of grant).

PLANNING GRANTS

§ 272.322. Eligible costs.

The proposed revision stated that indirect costs, as defined in Office of Management and Budget Circular A-87, as amended, will not be approved for a grant under § 272.321 (relating to scope of grant). This restriction is intended to reduce or eliminate requests for duplicate reimbursements for costs and implements a recommendation of the Department's Comptroller's Office based on past audits. A number of commentators expressed concern that this provision would exclude legitimately incurred costs and asked the Board to justify relying on OMB Circular A-87.

This provision has been retained and further clarified on final. Compliance with the provision may in fact lead to greater, not lower, reimbursements for counties, because it requires greater specificity in accounting by the counties and their consultants, which can lead to greater reimbursement. OMB A-87 has been used by Federal, State and local governments and their subcontractors for over 20 years in determining eligible payment under their grant programs, such as the Federal Community Development Block Grant program. Circular A-87 defines "indirect costs" as: "... those (a) incurred for a common or

joint purpose benefiting more than one cost objective and (b) not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results achieved." *Cost Principles for State, Local and Indian Tribal Governments*, 60 FR 26, 484, at 26, 292 (1995). Consequently, if a cost that otherwise would be considered an indirect cost is properly assigned to a specific cost objective, the Department will reimburse it as a direct cost. The "double billing" associated with fees expressed only as bulk fees, such as a consultant's "contingency fee" listed after itemized costs, will no longer occur. In order for these generalized costs to be reimbursed under this section, the bill simply needs to attribute them to a specific task. They will then be considered "direct costs."

GRANTS FOR DEVELOPMENT AND IMPLEMENTATION OF MUNICIPAL RECYCLING PROGRAMS

§ 272.332. Eligible costs.

Subsection (d) was amended on final to allow equipment purchased with funds from a grant to be owned by a municipal authority or an organization of municipal governments, and to allow such equipment to be used by or leased to another municipality, a not-for-profit agency, an organization of municipal governments or a municipal authority. The equipment may not be used by or leased to private entities, in order to prevent grantees from giving a competitive advantage to a particular business through a public-private partnership. This codifies the Department's policy position that has been in place for several years.

Language was added to new subsection (g) to enable a grantee who purchased property with grant money to trade the property in toward recycling equipment, in order to facilitate the improvement of recycling in this Commonwealth.

§ 272.333. Grant application.

Subsection (c)(1)(v) was amended to authorize the public notice to be in the form of a legal notice or public notice, as opposed to only in the form of a display advertisement. This amendment was made to enable municipalities to select the most economical approach to meeting their statutory notice requirement.

GRANTS FOR COUNTY RECYCLING COORDINATORS

§ 272.341. Scope of grant.

The Board made several changes to this section on final. The Board added "litter control" to the list of activities for which a county recycling coordinator grant may be used. The Board specified that data collected about municipal recycling programs, commercial, institutional and municipal establishment recycling, and recycling at community activities should be submitted to the Department by April 1 of each year. The Board replaced the term "used oil" with "automotive waste oil," to cover programs to recycle waste oil from vehicles. The Board expanded the list of special materials that recycling coordinators may develop programs for and be reimbursed for to include batteries, electronic equipment, computers and devices that contain cathode ray tubes. Finally, the Board added a new paragraph (15) to the list of reimbursable activities. Paragraph (15) allows county coordinators to be reimbursed for completing a performance audit of a municipality recycling program for a municipality within the county. This correlates to the deletion in § 272.316 (relating to performance audit) of the previously existing

text that prohibited grant moneys under this subchapter from being used as reimbursement for a performance audit.

GRANTS FOR HOST MUNICIPALITY INSPECTORS

§ 272.362. Eligible costs.

Subsection (b)(7) has been amended to reflect the new "inactive status" that is described in § 272.364 (relating to maintaining certification; inactive status; decertification; recertification).

§ 272.364. Maintaining certification; inactive status; decertification; recertification.

Commentators objected that decertification was too strident of a consequence for failing to perform at least one inspection per calendar year, as was proposed under subsection (a)(2). In response, the Board amended subsection (a) to state that failure to conduct one inspection a year will result in automatic "inactive status" (instead of decertification) 6 months later (July 1 of following year), unless the inspector takes the Department sponsored advanced training course and performs satisfactorily on the written examination in the meantime. A written examination is necessary to ensure that the inspector stays current with important operational, environmental, health and safety developments. Similarly, the Board added the requirement that, to maintain active status, an inspector must complete the advanced training course once every 3 years and perform satisfactorily on the written examination.

One commentator asked why subsection (a) requires testing every 3 years to maintain certification. The Board retained this requirement to ensure that the host municipality inspectors remain current and understand developments regarding health and safety, regulations and policies for waste facilities and environmental issues. Testing will confirm for the Department that the inspector has mastered the material. In addition, a majority of the host municipality inspectors are not environmental practitioners by trade or vocation; therefore, they do not receive pertinent environmental information as part of their job functions on a daily basis.

Subsection (b) is new on final. It describes the restrictions applicable to an inspector whose status is "inactive."

The decertification provisions in subsection (c) have been modified in response to public comment. Proposed paragraphs (1) and (7) were deleted because their commission now leads to "inactive status" instead of decertification. Paragraphs (2), (4)—(6) have been revised to require that the activity occur "knowingly." The Board also amended subsection (c)(4) to clarify that knowingly distributing information to an employee of the Department, the EPA, the Office of the Attorney General or the United States Department of Justice would not be a reason for decertification.

Subsection (d) sets forth the notification procedures that will be followed if a host municipality inspector violates subsection (c). Commentators suggested that a more detailed process be established, that the regulation specify that decertification actions are subject to appeal before the hearing board, that the Department should not issue a decertification order until proceedings before the Environmental Hearing Board (EHB) are concluded and that a special hearing board be established. Concern about procedural due process was expressed. It was not necessary to include these changes in the final-form regulations because all Department actions, including decertification, are subject to appeal before the EHB.

Case law has established that this appeal procedure satisfies due process considerations. Information regarding the appeal process will be disseminated to host municipality inspectors through the advanced training course, education seminars and host inspector meetings conducted by the Department. The Department will not send out a notice of decertification unless and until an investigation has taken place and the Department has made an informed decision to decertify. The Department will provide the inspector and host municipality with notice of the pending investigation. Procedures involving possible decertification and appeal will be explained in the notice of the pending investigation. The notice will not be sent to the facility, but if decertification is warranted, a notice of decertification will be sent to the facility, as well as the host municipality and host municipality inspector, because the facility and host municipality need to know if an inspector is currently authorized to perform his duties. At that point, the inspector would have a right to appeal the decertification. As with all appealable actions of the Department, the order would be effective unless and until the appellant obtained a supersedeas.

An inspector who is decertified may be eligible for recertification. Subsection (c) requires the Department to state in its notification of decertification whether an inspector will be eligible for recertification. The Department will consider the nature and gravity of the misconduct in making this determination. This decision may be part of an appeal, as will be a decision to decertify. An eligible decertified inspector may become recertified after 2 years by meeting the statutory requirements for becoming a host municipality inspector in section 1102 of Act 101 (53 P.S. § 1102) (relating to joint inspections with host municipalities).

Subchapter E. MUNICIPAL RECYCLING PROGRAMS

REQUIRED RECYCLING PROGRAMS

§ 272.411. Affected municipalities.

The proposed amendment of subsection (d) had included the date of July 15, 2003, as the date by which a municipality meeting the conditions of this subsection would have to conduct a recycling program. The date has been deleted on final because the date on which the 2000 census data will become official is uncertain. The 2-year deadline contained in this subsection will apply.

Subchapter F. HOUSEHOLD HAZARDOUS WASTE COLLECTION

REGISTRATION AND APPROVAL OF PROGRAMS

§ 272.513. Contract.

A typographical error in the numbering of paragraph (3) is corrected in this final-form rulemaking.

CHAPTER 273. MUNICIPAL WASTE LANDFILLS

Subchapter B. APPLICATION REQUIREMENTS

PHASE I APPLICATION REQUIREMENTS

§ 273.112. Facility plan.

One commentator suggested that language be added to indicate how the soil quantities would be provided. The Board agrees and added language in paragraph (2) to require the permit application for a municipal waste landfill to include a description of the method by which the soil necessary for construction and operation will be delivered. If soil is not located onsite, the traffic, access

roads and other impacts need to be evaluated when performing the environmental assessment process.

§ 273.115. Geology and groundwater description.

Subsection (a)(3) was amended to allow alternative techniques for characterizing groundwater to be employed when the standard multiple well aquifer tests are not feasible. This allows the applicant to use alternative methods if unique hydrogeologic conditions are not conducive to standard testing techniques.

The Board also added language in subsection (a)(9) to allow the Department to require more frequent water level measurements after significant precipitation events. This information is necessary if the monthly measurements required by the regulations do not adequately represent the highest possible water levels which are needed to design the site.

Two commentators suggested that the duration and frequency of water level measurements were unreasonable as a preapplication obligation. One of these commentators also indicated that the required groundwater contour map should be made from measurements obtained during the same month, not the highest measurement obtained from a particular well. The Board declined to make changes to address the first issue, since water level measurements obtained over the course of a year, and after significant precipitation events, are the only way to determine the inherent periodic and seasonal groundwater fluctuations that occur at most sites. The Board agrees with the second issue, but no changes to the Annex are necessary because the error was in the preamble explanation of how the contour map would be used. The contour map is only used to determine appropriate liner system isolation distances from the regional water table, and cannot be used to depict groundwater flow patterns.

One commentator requested clarification on the purpose, construction and duration of the borings used to measure water levels. The Board declined to modify the regulations to address this issue, as the specifics of borehole construction and maintenance may be tied to conditions unique to each facility. These details are routinely decided based upon discussions with the Department during the background groundwater characterization and monitoring process.

§ 273.120. Mineral deposits information.

The Board amended the language in subsection (b) to require that the applicant either own the underlying mineable coal, or own the land or enter into an enforceable option contract to purchase land on which an expansion would operate and have an agreement with the owner of the coal to maintain support as long as waste remains on the site. These requirements are necessary to prevent failure of the landfill liner system should settlement occur into voids created by coal mining. Under the previous structure, the applicant was required to demonstrate that the owner of underlying mineable minerals would not mine the minerals as long as municipal waste remained on the site. The amendments remove the ambiguity of the term mineable mineral deposits and instead apply the restrictions to mineable coals, which is the mineral most likely to be mined and is consistent with the mineral deposits information in the residual waste regulations. The amendments also provide some opportunity for existing facilities to expand onto areas where the applicant does not own the underlying coal.

§ 273.121. Notification of proximity to airport.

This section has been revised on final to reflect the new Federal legislation restricting construction of landfills within 6 miles of certain airports. (*Wendell H. Ford Aviation Investment and Reform Act for the 21st Century*, Pub. L. No. 106-181, § 503, 114 Stat. 61 (2000), amending 49 U.S.C.A. §§ 44718(d) and 46301(a)(3).) Under the revisions, an applicant will have to notify and include copies of the notifications to the FAA, the airport and the Department of Transportation's Bureau of Aviation as well as any responses received from those entities. This information will assist the Department in determining whether construction of the facility or modification thereof would be safe. If any of the respondents expresses safety concerns, the applicant will generally be required to submit a mitigation plan under § 271.127 (relating to environmental assessment), at a minimum. If § 271.201(9) (relating to criteria for permit issuance or denial) is triggered and the Administrator of the FAA is not asked to or does not exempt the proposed facility from 49 U.S.C.A. § 44718(d) (relating to limitation on construction of landfills), the application will be denied. The section has also been revised to apply to all applications for new landfills or expansions, not just to new landfills and lateral expansions, because the phrase "lateral expansions" was unnecessarily restrictive.

PHASE II APPLICATION REQUIREMENTS

GENERAL PROVISIONS

§ 273.132. Operation plan.

Two commentators suggested that paragraph (6) be changed to require the applicant to differentiate between waste acceptance, construction and other activities. The Board declined to make this change as the applicant may differentiate between the various activities when describing the proposed operating hours.

One commentator opposed the proposed addition to paragraph (6), which clarifies that operating hours include those hours related to construction and other activities related to the operation of the facility. The Board is retaining this language because the hours when construction and other activities take place can cause considerable nuisances to the surrounding community, and this should be identified for comment and consideration during the application phase of the proposed facility.

§ 273.133. Map and grid requirements.

The Board has added a requirement in new subsection (a)(14) that an application for a municipal waste landfill indicate on the topographic map a designated area for vehicles for use in the event of the detection of waste containing radioactive material. As with the other requirements in this subchapter, this requirement applies to all permit applications, not just applications for new facilities. A transition schedule has been developed in § 271.114 (relating to transition period) for existing facilities to come into compliance with this regulation. The designated area must protect the environment, facility staff and public from radiation originating in the vehicle. The Department's *Guidance Document on Radioactivity Monitoring at Municipal and Residual Waste Processing and Disposal Facilities*, document number 250-3100-001, describes various factors to consider in determining an appropriate designated area.

§ 273.134. Plan for access roads.

A commentator suggested that the proposed requirement that access roads be designed and constructed to

adequately handle the truck traffic was not clear. The Board agreed and removed the proposed changes to this section.

One commentator indicated that access roads should comply with a Department of Transportation standard. The Board declined to make this change because the access roads are designed based upon the expected use, and one standard could not adequately address all possible uses.

§ 273.136. Nuisance minimization and control plan.

One commentator requested clarification as to whether certification was required for professionals under contract to provide extermination or other nuisance minimization and control services. The Board declined to make changes to this section. The exterminator or other professional used to minimize nuisances does not need to be certified but should be familiar with and able to conform to the technical standards of the activity.

§ 273.139. Relationship to county plans.

One commentator suggested that subsection (b)(1) be incorporated into Chapter 272. In response, the Board incorporated the concept of being "provided for" in § 272.227 (relating to selection and justification of municipal waste management program). The same commentator questioned whether being "provided for" in relation to providing capacity assurance applied to processing facilities in addition to disposal facilities. The use of this phrase in Chapter 273 only refers to municipal waste landfills. Two commentators asked the Board to clarify that modifications and expansions of facilities provided for in host county plans need not be separately provided for in county plans. The Department generally considers expansions to be "provided for" if the facility is provided for in a county's plan; however, the terms and conditions of the county's plan may specifically address the inclusion of a facility's future modifications and expansions. The Board did not change the regulation in this regard.

§ 273.140a. Radiation protection action plan.

The Board has added a new section in the final-form rulemaking requiring that an application for a municipal waste landfill contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting. As with the other requirements in this subchapter, this requirement applies to all permit applications, not just applications for new facilities. A transition schedule has been developed in § 271.114 (relating to transition period) for existing facilities to come into compliance with this regulation. The action plan must be incorporated into the landfill's approved waste analysis plan, under § 271.613 (relating to waste analysis plan). The permit modification will be a major modification. The action plan must be prepared in accordance with the Department's *Guidance Document on Radioactivity Monitoring at Municipal and Residual Waste Processing and Disposal Facilities*, document number 250-3100-001, or in a manner at least as protective of the environment, facility staff and public health and safety and which meets all statutory and regulatory requirements.

An approved action plan will specify the radiation exposure rate, in accordance with these regulations and the foregoing guidance document, at which the facility's radiation detection monitors will indicate the presence of radioactive material in waste in accordance with § 273.223 (relating to radiation monitoring and response). A waste load that does not trigger a radiation monitor

will need no further action regarding radioactive materials screening. A waste load that does trigger a radiation monitor may only be accepted at the landfill if it is within the acceptable range approved in the action plan in accordance with these final regulations and the operator obtains additional written approval of the Department for that particular waste load. The Department's written approvals will be decided situation by situation or in advance in the facility's approved action plan. The Department will not authorize any waste containing radioactive material to be accepted at a municipal waste landfill if it is above regulatory limits or if its disposal would endanger the health and safety of the public or the environment.

PHASE II APPLICATION REQUIREMENTS

COVER AND REVEGETATION

§ 273.141. Compaction and cover plan.

The Board amended the language in paragraph (4) to require that the application identify procedures to establish intermediate cover, in addition to the procedures already required for final cover. The design and procedures to place intermediate cover are important as the intermediate cover may be in place for extended periods of time.

One commentator suggested that language in paragraph (1) be changed to reference "cover soil" instead of "waste". The Board declined to make the change. This section includes requirements for waste, daily, intermediate, and final cover. Paragraph (1) refers to waste compaction.

A commentator suggested that paragraph (4) be reworded to reference the procedures to establish intermediate and final elevations for the landfill cap. The Board declined to make the suggested change because the plan does not solely apply to the cap.

PHASE II APPLICATION REQUIREMENTS

LINERS AND LEACHATE MANAGEMENT

§ 273.161. Liner system and leachate control plan.

Several changes were made to the final-form regulations in this section.

The Board amended the existing liner testing properties to reflect current liner compatibility testing procedures. The following properties were added: density, carbon black content, carbon black dispersion, stress crack resistance and oxidative induction time. The following properties were deleted: the modulus of elasticity, impact resistance, operating temperature range, ozone resistance, water vapor transmission, coefficient of linear thermal expansion, and low temperature/brittleness.

Several commentators questioned why the proposed rulemaking required percent recycled material as a testing property and suggested that it be deleted unless this information is relevant. The Board declined to make the change. The percent recycled material can significantly vary during the manufacturing of liners and can change the performance of the liner.

A number of commentators suggested changes to the liner testing properties. The Board made changes based upon the suggestions of the commentators and based upon current liner testing procedures.

One commentator suggested that liner friction is not by itself an adequate determination of engineering acceptance and that a stability analysis using actual liner friction values should be required. The Board declined to

make a change in this section, but agrees that the liner friction angle is one of many factors considered during the stability analysis required as part of the permit application process.

PHASE II APPLICATION REQUIREMENTS

CLOSURE PROVISIONS

§ 273.192. Closure plan.

Several commentators found the phrase "toward and after closure" to lack clarity. The Board replaced this phrase with "in preparation for closure and after closure." "Closure" is the point at which the entire facility permanently ceases to accept waste. It happens only once at a landfill. Under the final-form regulations, the application shall contain a plan describing the activities that are proposed to occur in preparation for closure and after closure and a narrative description of the measures that are proposed to be carried out.

§ 273.196. Recycling plan.

A commentator suggested that the Board clarify that salvaging allow for materials recovery during landfill mining. The Board did not make a change to this section. Landfill mining is a municipal waste processing operation that can be approved as a major modification to the landfill disposal permit or can be approved under an individual or general processing permit.

Subchapter C. OPERATING REQUIREMENTS.

GENERAL PROVISIONS

§ 273.201. Basic limitations.

Subsection (g) has been revised to prohibit the practice of landfill operators accepting bulk or noncontainerized liquid but provides for the acceptance of containers holding free liquids for the purpose of disposal on site if approved in the permit.

This section has been revised in the final rulemaking to specify clearly the types of radioactive materials that might be found in the municipal waste stream that may not be accepted at a municipal waste landfill.

Subsection (l) lists six types of radioactive materials that are controlled under specific or general license or order. These are prohibited from disposal at a municipal waste landfill unless they are specifically exempted from disposal restrictions by an applicable Pennsylvania or Federal statute or regulation.

The first type, in paragraph (1), is NARM, which includes naturally occurring and accelerator produced radioactive material. Examples of NARM are radium, potassium-40, various isotopes produced in accelerators, such as cobalt-57, and members of the uranium-238 and thorium-232 decay chains when they don't meet the requirements for source material or special nuclear material.

Paragraph (2) prohibits disposal of byproduct materials. These are produced by nuclear fission, or otherwise, in the nuclear energy cycle. Prominent examples are cesium-137 and strontium-90.

Paragraph (3) prohibits disposal of source material which, by definition, is uranium and/or thorium present at a combined concentration, by weight, of 0.05% or more. Examples are uranium ores and slags produced by smelting rare earth ores containing uranium and thorium.

Paragraph (4) prohibits disposal of special nuclear material, which includes those isotopes of uranium and plutonium that will split, or fission, when struck by

neutrons. Examples of special nuclear material include uranium-233, uranium-235, and plutonium-239.

Paragraph (5) prohibits disposal of transuranic radioactive materials, which include all elements with an atomic number greater than 92 (92 = uranium). Examples include neptunium, plutonium, americium, curium, californium, berkelium, einsteinium, fermium, mendelevium, and others. Transuranic elements do not occur naturally and are produced in high energy accelerators.

Paragraph (6) prohibits disposal of low-level radioactive waste. A definition of low-level radioactive waste is contained in section 130 of the Low-Level Radioactive Waste Disposal Act (35 P. S. § 7130.130).

Subsection (m) lists three categories of radioactive materials that are prohibited from being accepted at a municipal waste landfill unless approved in writing by the Department, and the disposal does not endanger the environment, facility staff or public health and safety.

The first radioactive material, in paragraph (1), is short-lived radioactive material from a patient having undergone a medical procedure. Certain short-lived radioactive materials are administered to medical patients for diagnosing or treating some illnesses. Once these materials are administered to the patient, they no longer fall under Nuclear Regulatory Commission (NRC) or Pennsylvania licensing. Some of the material is retained in the patient and some is excreted in urine, feces, sweat, saliva or mucous and may get into solid waste through disposal of personal care items. The Department's intent is to authorize this material to be disposed in waste facilities upon case-by-case permission from the Area Health Physicists or Director of the Bureau of Radiation Protection, or advance authorization in the landfill's approved action plan, using the general concepts provided in the Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, document number 250-3100-001.

Paragraph (2) addresses TENORM, which is naturally occurring radioactive material which has been altered by human activity in a manner that results in increased radiation exposure to people. The alteration could be chemical or physical change in form, relocation of the norm, or removal of barriers that isolated the norm. The Department's intent is to authorize disposal of TENORM in municipal waste landfills only in amounts and concentrations that will not result in concentrations of the NORM isotopes significantly above local background. Authorization will be given as case-by-case permission from the Area Health Physicists or Director of the Bureau of Radiation Protection, or advance authorization in the landfill's approved action plan.

Paragraph (3) addresses consumer products containing radioactive material. Some consumer products, such as smoke detectors, luminous dial clocks and watches, or some ceramics will wind up in the waste stream. The Department intends to allow disposal of small quantities of these under conditions specified in the facility's approved action plan or on a case-by-case basis with permission from the Area Health Physicist or Director of the Bureau of Radiation Protection.

Subsection (n) provides that the limitations set forth in this section will not apply to radioactive material as found in the undisturbed natural environment of the Commonwealth. The original soil and rock in many parts of this Commonwealth contain sufficient uranium, thorium, radium and potassium-40 to cause monitors to

alarm even at quite high settings. This provision ensures that facilities may use soil and rock from undisturbed sites for cover, regardless of the content of radioactive material.

§ 273.202. Areas where municipal waste landfills are prohibited.

The Board changed the lead-in language in subsection (a) to be more specific and limited. The lead-in no longer contains the "grandfathering" language, but cross references new subsections (b) and (c), in which it is now located. Areas that had been grandfathered under the 1988 regulations but not re-permitted under 1988 regulations will no longer be grandfathered. See explanation of subsection (b) below.

Several commentators suggested that the word "land" be inserted into the lead-in language to subsection (a), as: "Except for land areas that were permitted . . ." This change is not warranted because the definition of "municipal waste landfill" in § 271.1 (relating to definitions) already includes land affected by the operations and includes support facilities, sheds, storage facilities and more.

Several commentators suggested that a new isolation distance be created limiting the acceptable distance for a landfill from a freeway interchange ramp, because of the impacts of trucks traveling greater distances along secondary roads. The Board declined to include this provision because locating a facility within 10 miles of a freeway interchange may prohibit areas where the siting of landfills may be ideal. A detailed traffic analysis is done during the application review and considered during the environmental assessment process.

Two commentators suggested that all setbacks be measured from areas used for disposal, processing, recycling or storage of solid waste, including the storage and treatment of leachate. The Board declined to make this change. All setback distances are measured from the permit boundary, in accordance with the statutory definition of "municipal waste landfill."

Two commentators suggested that subsection (a)(2)(ii) be made clearer so there is no doubt that it applies to new permitted municipal waste landfills. The Board amended the rulemaking to make this clearer. The final-form rulemaking applies the 100 foot isolation distance from wetlands other than exceptional value wetlands only to new facilities.

Two commentators asked that permit applications on file with the Department prior to the effective date of these regulations be grandfathered from the new limitations in subsection (a)(3)(i) relating to underlying minerals and asked that this subparagraph indicate clearly that it applies to existing facilities and expansions thereof. The same commentators asked that the old rule be retained, which allowed the operator either to own the minerals or to enter into an agreement with the owner to provide support. Another commentator suggested that the proposed requirement that an operator own the subsurface rights to all minerals is overly broad, ambiguous and required definition. The final-form rulemaking does not grandfather permit applications, but does clarify which facilities are subject to which rules. Portions of the old rule were retained, but new provisions were also added. The clarifications appear in subsections (a)(3) to (a)(5), all of which relate to coal now.

Under subsection (a)(3), an area that was permitted as a municipal waste landfill between April 9, 1988, and the effective date of this final-form rulemaking remains sub-

ject to the rule in place during that time period and may not be operated in areas underlain by recoverable or mineable coals unless the operator of the facility demonstrates and the Department finds that the operator owns the underlying coal or has entered an agreement with the owner of the coal to provide support. The Board deleted the proposed language in subparagraph (ii) that would have required the operator of a facility permitted on or after publication of the final-form regulations to own the underlying mineable minerals.

Under subsection (a)(4), a later expansion of a municipal waste landfill that was permitted between April 9, 1988, and the effective date of this final-form rulemaking may not be operated in coal bearing areas underlain by recoverable or mineable coals unless the applicant satisfies one of two conditions. The first condition is that the applicant own the underlying coal. The second condition is that the applicant owned or entered into an enforceable option contract to purchase land on which the expansion would operate on or before the effective date of this final-form rulemaking and still holds the options rights, owns the land or owns the land under the option rights contract when the permit expansion is issued. In order to meet the second condition, the applicant must demonstrate in its application that coal providing support for the expansion area will not be mined as long as waste remains on the site.

Under subsection (a)(5), a new municipal waste landfill permitted on or after the effective date of this final-form rulemaking may not be operated in coal bearing areas underlain by recoverable or mineable coal, unless the permittee owns the underlying coal.

One commentator suggested that the prohibition against operating a landfill over limestone or carbonate formations (former subsection (a)(5)) should be modified to allow mitigation. This change was not made because a landfill, including the liner system, cannot be safely designed to adequately address unknown future stresses or areas of instability that could result from siting the landfill over limestone or carbonate formations. Karst topography in this Commonwealth is predominantly associated with limestone or carbonate formations.

Regarding subsection (a)(8), (former subsection (a)(6)), three commentators asked that the old 300-foot isolation distance from occupied dwellings apply to existing facilities and expansions of existing facilities. Three commentators asked that the new 300-yard isolation distance apply to expansions and also to major modifications. One commentator objected to the new 300-yard isolation distance applying in any situation. The Board made a number of changes to this provision, breaking it into four subsections, numbered (a)(8)—(11). The new provisions allow some flexibility for currently operating facilities and facilities expanding onto land already owned or under option rights on the effective date of these final-form regulations, but impose the new isolation distance on new and reopened landfills.

Subsection (a)(8) addresses operations at existing municipal waste landfills and at permitted non-captive (Class I) residual waste landfills that were operating under their residual waste permit and not closed as of the effective date of this final-form rulemaking and that convert to a municipal waste landfill after the effective date. Under the final-form regulation, these are subject to the old 300-foot setback. Disposal areas may not be closer than 500 feet except upon waiver by the owner of the dwelling.

Subsection (a)(9) addresses expansions of municipal waste landfills where the landfill was permitted before the effective date of this final rulemaking. The subsection also addresses expansions of residual waste landfills that were operating under their residual waste permit and not closed as of the effective date of this final rulemaking and that converts to a municipal waste landfill after the effective date of this final rulemaking. Expansions must be 900 feet from an occupied dwelling unless the owner provides a written waiver that meets the requirements of this subparagraph (i) or the expansion will be on land owned by the applicant on the effective date of the final-form regulations, subject to an enforceable option contract for purchase of the land on that date or purchased after the effective date of the final-form regulations under an option contract entered into prior to the effective date. (Subparagraph (ii).) If the contract/option provision applies, the expansion may not be operated closer than 300 feet and the disposal area may not be within 500 feet of an occupied dwelling unless the applicant obtains a waiver as described in subparagraph (i).

New municipal waste landfills will be subject to the 900-foot isolation distance, unless they obtain a waiver in accordance with subsection (a)(10). A closed landfill that submits an application to reopen and expand shall also be subject to this paragraph.

Access roads are not subject to the 900-foot isolation distance. Under subsection (a)(11), access roads are subject to a 300-foot setback. While an increase in the setback to 900 feet from landfill activity is necessary to address issues such as noise, dust and odors, these issues can continue to be adequately addressed for access roads with a 300-foot setback.

One commentator suggested that the isolation distance from a perennial stream should be the same as in the residual waste regulations. The Board agrees and has amended subsection (a)(12) accordingly. A municipal waste landfill cannot be located within 100 feet of a perennial stream unless storage, processing and disposal will not occur within that distance and no adverse hydrologic or water quality impacts will occur.

The proposed rulemaking had proposed to revise the airport isolation distances so that an exception would be available to an operator who could demonstrate that the landfill was designed and operated so that it would not pose a bird hazard to aircraft. On final, the Board deleted the exception and returned the regulatory language to its original form as it existed in subsection (a)(9) and (10). These provisions are found in new subsection (a)(14). The Board inserted date restrictions in this subsection, so that it applies to the areas to which it had already applied, namely those permitted on or after April 9, 1988, and before January 25, 1997. The proposed language, that would have transformed this paragraph into a copy of the EPA regulation that allows operations if the facility has provided a bird hazard mitigation plan, was discarded in favor of greater protection of the public health, safety and welfare and the environment by outright restrictions.

Subsection (a)(15) carries over language from the 1997 regulatory amendment that eliminated the modifier "FAA certified." All landfill areas permitted on or after January 25, 1997 are still subject to the isolation distance in this paragraph. The word "airport" used in paragraph (15) is defined in § 271.1 to comport with the Department of Transportation's definition of "public airport," except that the definition in § 271.1 does not include heliports.

The prohibition in paragraph (16)(i) against operating within the "conical airspace" was retained, although its deletion had been proposed. This prohibition offers important protection against air traffic accidents by protecting against construction at heights that would interfere with an airport's flight path. A new subparagraph (ii) was added to paragraph (16), to include all of the "imaginary surfaces" which the Federal Aviation Administration protects in 14 CFR 77.23(a)(5) (relating to standards for determining obstructions), not just the conical airspace. This will offer greater protection against intrusion into the airport's flight paths.

Several commentators wanted the Board to apply the isolation distance from schools, parks and playgrounds to expansions of existing facilities as well as to new facilities. These commentators also wanted this isolation distance to apply to places of worship and their grounds. The Board retained the proposed language because it is consistent with section 511 of Act 101. Impacts on places of worship can be evaluated during the balancing of harms and benefits in the environmental assessment.

A new subsection (b) has been added to § 273.202 to explain which areas are grandfathered. This regulation no longer grandfathers all areas permitted prior to April 9, 1988. Instead, it grandfathers those areas only if they were later included in a municipal waste landfill permit issued between April 9, 1988, and the effective date of these regulations. Those areas are not subject to the isolation distances cross referenced in subsection (b) as long as the permit did not become void. Hence, an area permitted as a municipal waste landfill prior to April 9, 1988, that has not been permitted under the 1988 regulations no longer receives protection from isolation distances. Areas are not grandfathered from the prohibition in subsection (a)(1) against operating in a 100-year floodplain because this prohibition existed before 1988. Areas are not grandfathered from the underlying coal restrictions in subsection (a)(4) and (5) because those paragraphs contain their own dates of applicability. The same is true of subsection (a)(9) and (10), relating to occupied dwellings, (a)(15) relating to airports, (a)(16)(ii) relating to obstructions to air navigation and (a)(18) relating to schools, parks and playgrounds.

New subsection (c) establishes that none of the isolation distances applies for purposes of conducting postclosure activities for areas permitted as a municipal waste landfill prior to the effective date of these final-form regulations. This subsection is designed to allow postclosure activities to continue despite isolation distances in order to achieve proper and effective final closure.

§ 273.203. Certification.

Two commentators asked the Board to combine paragraphs (2)—(6) to allow certification of all liner construction activities at the same time. The Board did not make the change. The certification of each major construction activity is necessary because the incorrect construction of one component may compromise the integrity of the entire liner system.

DAILY OPERATIONS

§ 273.211. Signs and markers.

One commentator suggested that the sign requirements should continue to require the name, address and telephone number of the organization operating the facility. The Board agrees and retains the name, business address and telephone number of the person or municipality that operates the facility, the operating hours and the permit identification number.

§ 273.213. Access roads.

Two commentators suggested that access roads should be considered those roads from the entrance gate to the disposal area. The Board did not make this change because certain operating requirements, such as stormwater management and dust controls, apply to all access roads. Where necessary, this section sets additional standards for roads leading to the disposal area which do not apply to other access roads.

§ 273.214. Measurement and inspection of waste.

Subsection (a) has been amended to reflect the repeal of the Weights and Measures Act of 1965 and the Public Weighmasters Act of 1961. Both acts were replaced with 3 Pa.C.S. §§ 4101—4194 (relating to Consolidated Weights and Measures Act).

Subsection (c) has been amended to delete the requirement to monitor and inspect incoming waste for radioactive isotopes. In response to public comments received on subsection (c), this requirement was refined and moved to §§ 273.133, 273.140a, 273.223, 273.311 and 273.313. Similar provisions appear in Chapters 277, 279, 281 and 283, and a transition schedule appears in § 271.114.

A number of commentators submitted comments on subsection (c). The commentators suggested that the Board clarify the amount of inspection necessary for an operator to determine the characteristics of incoming waste. The Board has clarified this in § 273.140a (relating to radiation protection action plan) and § 273.223 (relating to radiation monitoring and response). More detailed information on monitoring and inspection is provided in the Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, Document Number 250-3100-001, which is cross-referenced in these sections.

The commentators requested that the specific level that would trigger rejection of a load of waste containing radioactive material be stated in the regulations. In response to this comment, the Board included in § 273.223 the levels at which an operator must immediately isolate a vehicle and notify the Department. One level is for radiation dose rates detected in the cab and the other level is for radiation detected from any other surface.

Once notified, the Department staff and possibly staff from Federal agencies will assist the facility and its consultants in identifying, localizing and quantifying the radioactive material in the load. This is a stepwise investigative process that will ultimately determine what corrective action is needed. The entire problem may be in one bag or the whole load may require disposal. These procedures are further described in the guidance document mentioned above. It is noted that there is a lower alarm level which calls for the facility to investigate the problem in accordance with its approved action plan, guidelines for which are set forth in the guidance document. In the range between this lower alarm level (Action Level I) and the levels above where the Department is called immediately (Action Level II), a facility has a variety of options available, including rejection of the load and sending it back to origin providing that a Department of Transportation Exemption is obtained from the Department. At levels at or above Action Level II, special handling of the radioactive material will be required and simple rejection is not permissible.

The commentators also asked the Board to examine the costs and capital necessary for landfills to monitor and inspect waste for radioactive material. The commentators

asked that the Board consider establishing a reasonable time frame for compliance with the new regulations if the costs were significant. In response, the Department analyzed the costs necessary to inspect for radioactive materials and determined that the costs of installing the equipment and implementing the required procedures is minimal compared to the costs associated with managing radioactive wastes that have been improperly disposed in a landfill or resource recovery facility. Nevertheless, to accommodate the transition, the Board included a new section, § 271.114 (relating to transition period), which establishes a schedule by which each regulated facility is to come into compliance with the new requirements.

§ 273.216. Unloading and compaction.

One commentator indicated that the proposed amendments to the working face requirements should not be deleted, but rather reworded to define the working face in terms of daily cover requirements. The Board did not make this change because the information concerning the procedures used at the working face is covered in sections dealing with the placement of daily, intermediate and final cover.

§ 273.217. Air resources protection.

The Board clarified in subsection (b) that an air quality plan approval and air quality operating permit are issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources). The Board declined to make further revisions in response to comments suggesting that a separate air plan should be required under the municipal waste regulations and that methane gas control should be focused on. The air quality plans address methane gas control and management. Odors that result from transportation or landfill working face activities can also be addressed by operational changes.

§ 273.218. Nuisance minimization and control.

The Board amended subsection (b) to require the operator to minimize and control "public nuisances" from odors. The proposed subsection had only referenced "nuisances." Subsection (b) is now consistent with subsection (c). Similarly, to harmonize subsection (c) with (b), the requirement was added that the operator implement the plan approved under § 273.136 (relating to nuisance minimization and control plan). The Board did not revert to the "prevent and eliminate" language of the prior regulation as suggested by several commentators because field experience shows that nuisances cannot always be prevented. Finally, the Board reversed the order of subsections (b) and (c) for clarity.

§ 273.221. Daily volume.

Two commentators suggested that this section be deleted because the design and operation of the landfill is based upon the maximum daily volume. The Board declined to delete this section. Act 101 requires that a municipal waste landfill include an average and maximum daily volume.

§ 273.223. Radiation monitoring and response.

A new § 273.223 has been added to this final rule-making to address monitoring for and responding to radioactive materials in municipal waste. Subsection (a) requires the facility operator to implement the action plan approved under § 273.140a (relating to radiation protection action plan). Subsection (b) requires the operator to monitor in accordance with the Department's *Guidance Document on Radioactivity Monitoring at Municipal and Residual Waste Processing and Disposal Facilities*, document number 250-3100-001 (or in an

equally protective manner), the facility's approved radiation protection action plan and this section. Subsection (c) describes the required sensitivity of the monitors and establishes the maximum level of radiation at which they must be set to alarm. In addition to the monitors described in subsections (b) and (c), portable radiation monitors that can determine the radiation dose rate and the presence of contamination on a vehicle that has caused an alarm are required by subsection (d). When radiation is detected at a landfill and the alarm exceedance is confirmed, the operator must perform a radiological survey of the vehicle. If a dose rate specified in subsection (e) is detected, the operator must notify the Department immediately and isolate the vehicle. Once notified, the Department staff, and possibly staff from Federal agencies, will assist the facility and its consultants in identifying, localizing and quantifying the radioactive material in the load. This is a stepwise investigative process that will ultimately determine what corrective action is needed.

To ensure that the monitoring equipment continues to function properly, subsection (f) requires that the equipment be calibrated at least once a year and more often if so specified by the manufacturer.

Subsection (g) notes the Federal requirement that, once the presence of radioactivity is detected (that is, above Action Level I, as described in the guidance document), the vehicle is not permitted to leave the facility with the material on board without written Department approval and an authorized Federal Department of Transportation exemption form issued by Department. The exemption forms will usually be issued by telephone or fax communication for levels between Action Level I and the Action Level II limits specified in subsection (e).

COVER AND REVEGETATION

§ 273.231. Topsoil storage.

In response to the proposal to delete this section, one commentator suggested that it may be more appropriate to modify this section to address topsoil used as part of a cap. The Board deleted this section, as proposed, because the design and performance standards for the final layer of soil placed over a cap are found in § 273.234.

§ 273.233. Intermediate cover and slopes.

One commentator expressed the concern that using waste as a cover material has the potential for pollution from erosion caused by excessive rain or flooding. The Board declined to amend this section in response because the intermediate slopes are located within the lined disposal area.

§ 273.234. Final cover and grading.

The Board amended subsections (a)(1)(i) and (c) to require the cap to have a permeability less than or equal to the permeability of the primary liner. This requirement is consistent with Federal Subtitle D requirements related to caps and will prevent the buildup of leachate during post closure activities. To be consistent with the amendments in § 273.234(a)(1)(i) and (c), the Board amended § 273.256, Table I by removing the option to use clay or bentonite caps.

Several commentators questioned the proposed requirement that the caps should limit the migration of precipitation into the landfill to the greatest degree technologically possible. The Board agreed and has deleted the requirement.

The Board amended subsection (b) to clarify that all layers of the final cover must be protected from differential settlement.

Two commentators suggested a variety of amendments to the design requirements of this section. The Board declined to make these amendments because they are unnecessarily prescriptive, and subsection (e) allows the operator to propose alternative designs through the equivalency review process.

WATER QUALITY PROTECTION

§ 273.241. General requirements.

One commentator indicated that the language in subsection (c) which requires the operator not to allow pollution within the site may be interpreted to mean that the operator would be in violation of the regulation if pollution from an upgradient industrial facility entered the site. The Board amended subsection (c) to indicate the operator may not cause water pollution within or outside the site from the operation of the facility.

§ 273.242. Soil erosion and sedimentation control.

A commentator suggested that subsection (c) include a specific time period for meeting the performance standards set for erosion and sedimentation control after a storm event has occurred.

The Board declined to make this change. The operator should repair the storm damage as soon as possible; and weather and planting conditions are taken into consideration.

LINER SYSTEM

§ 273.251. Scope and requirements.

Several commentators suggested that requiring the secondary or primary liner to be constructed as a composite liner is not necessary and that a single composite liner system or a double liner without a composite component is adequate. The Board declined to make this change because the performance of the liner system is greatly enhanced by adding a composite component to one of the liners. Many landfill operators in this Commonwealth recognize the composite component as state of the art in the industry and have added the layer to the design of their facilities to improve performance and long-term integrity. The final-form regulations allow construction of a liner under an existing permit for a period of 1 year from the effective date of the regulations. After that date, all liner construction must include a composite component.

§ 273.252. General limitations.

The Board amended subsection (c) to clarify that in confined layers at least 8 feet shall be maintained between the bottom of the liner system and where groundwater occurs in confined layers as the result of upward leakage. The term "upward" was added to clarify the intent.

The Board added requirements in subsections (d)—(f) to clarify the construction of berms and the placement of waste in relation to the berms. These were added to identify which requirements applied to temporary and perimeter berms.

One commentator suggested that the word "table" should be deleted when it is used in relation to the seasonal high water table and perched water table. The Board declined to make this change because the terms seasonal high water table and perched water table are defined in the regulations and are not inconsistent in their application.

§ 273.253. Subbase.

One commentator suggested that subsection (b) be modified to describe standards for the use of geosynthetic

or soil-like material in the subbase. The Board declined to make this change because the use of alternative materials can be demonstrated through the existing equivalency review process.

§ 273.254. Secondary liner.

Subsection (d) was amended to clarify that liners made of clay shall be compacted in 6-inch lifts unless data from a field demonstration validates the suitability of compacted lifts greater than 6 inches. Subsection (e) concerning the design and construction of the secondary liner is deleted because the standards for a composite secondary liner are now identified in the reformatted subsection (e). Minor amendments to the wording in subsection (e) were made to be consistent with the residual waste regulations.

Several commentators suggested language changes to terms used in this section concerning liner construction. The Board changed the term "stability" to "suitability" in subsection (d), and added the word "geosynthetic" before "liner" in subsection (e)(1).

§ 273.255. Leachate detection zone.

The Board amended subsection (b)(7) to remove the requirement that the stones or aggregates used to construct the detection zone be noncarbonate. This concern is addressed in the performance standards, which require the zone to be able to withstand chemical attack and function without clogging.

The proposed changes to subsection (d) concerning flow in the leachate detection zone were deleted. The current requirement, which requires the operator to test any leakage in the zone, was retained because this testing is used to determine whether the leakage is leachate. Subsection (e) was amended to require the flow calculation be based upon the flow in a lined collection area instead of the entire lined area. This can be used to more effectively address the leak on a localized basis.

The Board amended subsection (f) to require the operator to submit a plan for further action if the sampling results indicate that the concentration of constituents in the leachate detection zone could result in groundwater degradation. It is very important to address the leakage through the liner if the leakage has any potential to affect groundwater because addressing liner system problems early may have a significant impact on the long-term performance of the entire operation.

Two commentators suggested that changes should be made to subsection (d) to require that the liquid flow in the detection zone be determined on a quarterly average instead of on a weekly average. One commentator indicated that the proposed 10-gallon-per-day threshold would be routinely exceeded. The Board declined to make these changes. The final-form regulations maintain the current language because it is necessary to characterize any flow in the leachate detection zone.

§ 273.256. Primary liner.

The Board changed subsection (d)(1)(i) to require that the upper component of a composite liner be constructed of geosynthetic material. The Board changed the word "lower" to "composite" when describing the liner component made of earthen material in subsection (d). This change was made to be more descriptive and to be consistent with the residual waste requirements.

One commentator suggested that natural and remolded clay should be added as allowable material for the composite component. The Board modified Table I to

allow the composite component to be constructed of natural or remolded clay and to reflect the geosynthetic liner requirement. These materials are commonly used as composite components.

Two commentators indicated that Table I should be reformatted in a more readable manner and should be performance based. The Board declined to make these changes because the table has successfully been used in the past and if the operator does not prefer to use the identified design requirements, an alternative design may be approved through the equivalency process.

§ 273.257. Protective cover.

A commentator indicated that the term "graded" in subsection (b)(2) was incomplete. The Board deleted the design standard, which required that the protective cover be graded. This design requirement was not necessary.

§ 273.258. Leachate collection system within protective cover.

The Board deleted the proposed requirement in subsection (a)(2) that allowed the leachate depth on the primary liner to exceed 1 foot in depth in certain instances. This requirement was inconsistent with the Federal municipal waste landfill requirements in Subtitle D.

One commentator suggested that the term "noncarbonate" be defined. The Board amended subsection (b)(4) to delete the requirement that stones or aggregates in the leachate collection zone be noncarbonate. The performance standards in subsection (a) address this issue by requiring that the collection system be able to withstand chemical attack from the leachate.

One commentator suggested that there should be a requirement for at least two methods for leachate to flow to the low point of the landfill. The Board declined to make the change. The current design and performance standards for leachate removal are successfully being implemented at operating landfills.

LEACHATE TREATMENT

§ 273.272. Basic treatment methods.

Two commentators indicated that offsite hauling should be allowed as an unrestricted supplement to another approved method. In addition, leachate recirculation and leachate evaporation should be added as an allowable treatment option.

The Board declined to make these changes because offsite hauling is dependant on contracts with offsite treatment facilities that may not always be available. Leachate recirculation and evaporation can augment a permitted treatment method, but cannot be approved as a basic treatment method.

§ 273.273. Leachate transportation.

Two commentators suggested that subsection (b)(4) be revised to eliminate the requirement for 6-month advance notice for leachate treatment contracts. The Board declined to make amendments to this section because the 6-month advance notice is necessary should the operator need to construct an onsite treatment facility or secure another means for leachate treatment or disposal.

§ 273.274. Leachate recirculation.

A commentator suggested that leachate recirculation should be allowed as it promotes biological degradation of the waste and enhances gas production and recovery. The Board declined to make amendments to this section because leachate recirculation can be approved as part of the permit.

§ 273.275. Leachate collection and storage.

The Board amended subsection (g) to apply the new requirements for the design of underground leachate pipes to facilities permitted after the effective date of the final-form regulations. The new pipes must have secondary containment or comply with alternative methods of release detection identified in the underground storage tank regulations.

A commentator suggested that the 30-day leachate storage requirement allow more room for engineering mitigation. The Board declined to make the change because the 30-day storage requirement, in effect since 1988, has proven to be necessary to ensure sufficient storage during adverse weather conditions or unforeseen leachate handling problems.

Two commentators indicated that the dual containment piping required in subsection (g) is excessive, and proper performance can be assured through routine inspections. The Board amended subsection (g) to allow for alternative methods of release detection to be used.

§ 273.276. Leachate analysis and sludge handling.

The Board amended the proposed changes to subsection (a)(2) to not allow a reduction in the quarterly leachate chemical analyses testing requirements. It is necessary to have current information on the leachate quality to determine such things as the impact of the leachate on the liner system, the effectiveness of the leachate treatment system and the need for additional groundwater monitoring.

A commentator suggested that four quarters of testing is insufficient and that a longer period of time is necessary to evaluate the movement of contaminants. The Board declined to make this change.

WATER QUALITY MONITORING

§ 273.282. Number, location and depth of monitoring points.

The Board amended subsection (f) to ensure groundwater sampling would not be affected by materials used in the installation of the well. Two commentators suggested that the requirement for a groundwater monitoring point within 200 feet of the disposal area should be deleted as it is mutually exclusive with the point of compliance monitoring point. The Board declined to make this change because the detection monitoring wells within 200 feet of the disposal area monitor the performance of the facility and determine if groundwater assessment is required. The point of compliance is 150 meters and is used to determine when abatement is necessary.

One commentator suggested that the requirement for well drillers to be licensed should be maintained. The Board agreed and retained the requirement that the well drillers be licensed.

§ 273.283. Standards for wells and casing of wells.

The Board amended subsection (a)(3) to require that the well screen maximize open area to minimize entrance velocities and allow rapid sample recovery. This is necessary to make sure that the groundwater sampling can be done in an efficient manner.

The Board added new subsection (c)(7) to allow for alternative well casing designs in stable formations, if approved by the Department. This provides some design flexibility based upon the tightness of the hydrogeologic formation.

One commentator suggested that monitoring wells should be constructed in accordance with an ASTM standard. The Board declined to make the change because some requirements in the ASTM standard are in conflict with hydrogeologic and other portions of the Commonwealth's rules and regulations.

§ 273.284. Sampling and analysis.

The Board amended this section to move magnesium from an annual testing parameter to a quarterly parameter because magnesium is an effective early indicator of liner leakage or failure.

Several commentators suggested the regulations allow the reduction in the number of parameters and sampling frequency in the groundwater monitoring program. The Board declined to make the suggested changes for monitoring at facilities prior to closure. The waste acceptance plans approved at most landfills allow for a variety of waste to be disposed that may impact water quality in the event of liner failure. Reducing the number of parameters or sampling frequency may significantly reduce the effectiveness of the groundwater monitoring program. The Board did amend § 273.322 to allow the operator to request a reduction in the sampling frequency for parameters after closure.

§ 273.286. Groundwater assessment plan.

The Board amended subsection (c)(1) to clarify that groundwater monitoring devices installed at the point of compliance must be constructed in accordance with the design requirements for detection monitoring wells. Monitoring wells need to be constructed to the standards established for detection monitoring wells so that the groundwater information gathered is consistent and can be compared to data from other wells.

One commentator suggested that the time period for submitting reports under subsection (a) should be changed from 60 to 90 days because most sites request a 30-day extension. The Board declined to make this change. Based upon information from existing sites, most sites do not request an extension up to 90 days when submitting analytical results and the results need to be reported in a timely manner for use in evaluating the assessment plan.

§ 273.287. Abatement plan.

Subsection (d)(4) has been amended on final rulemaking to delete the term "primary" in reference to MCLs. As a result of this amendment, abatement and remediation standards will include primary and secondary MCLs. The insertion of the word "primary" in the proposed rulemaking was inadvertent and would have established an inconsistency with the references to MCLs in other parts of this section. Remediation standards for MCLs under the Federal regulations, at 40 CFR Part 258, refer only to primary MCLs, but in this Commonwealth secondary MCLs are enforceable drinking water standards, so the final-form regulations include all promulgated MCLs. The final-form regulations are thereby more stringent than the Federal regulations. The Board is primarily concerned about containing contamination on-site and minimizing offsite migration during the operation of a landfill. Facility design and operations must be adequate to minimize the release and migration of all contamination.

The Board also amended subsection (d)(4) to delete the redundant reference to the Safe Drinking Water Acts, which are already referenced in subsection (d)(1). The Board added a requirement in subsection (d)(4)(v) to

address the abatement levels for systemic toxicants. This is necessary to address action levels for parameters where MCLs have not been established.

A commentator indicated that the background standard should be the same as that used in the Land Recycling program. The term is defined in § 271.1 and has the same meaning as it has in the Land Recycling and Environmental Remediation Standards Act.

MINERALS AND GAS

§ 273.293. Gas recovery.

Two commentators suggested that there would not be a gas recovery byproduct generated as part of the gas recovery process. The Board amended subsection (b) to delete the word "gas" as the gas would not be a byproduct of gas recovery.

EMERGENCY PROCEDURES

§ 273.301. Hazard prevention.

A commentator recommended that first aid equipment and supplies should be available on site. The Board declined to require that first aid equipment and supplies be available at the facility. The Pollution Prevention Compliance plan submitted with the application identifies first aid equipment and procedures. These may or may not be directly located at the site.

RECORDKEEPING AND REPORTING

§ 273.311. Daily operational records.

Subsection (b)(10) has been added on final to require information to be kept in the daily record describing radioactive materials detected in waste loads. This information will be helpful to the operator, the host municipality inspector and the Department. If the origin of the material is known, it will be stated in the daily record, along with the identity of the supplier or handler of the radioactive material and the driver. Identifying these parties will enable the operator and the Department to take steps to prevent inappropriate distribution of radioactive materials in the future. The final disposition of the material is also required to be stated in the daily record. This will help the operator, host municipality inspector and Department know that the material will be properly disposed of.

Subsection (b)(11) has been added on final to require a landfill operator to identify vehicles that have arrived at the landfill over the maximum gross weight allowed on roadways of this Commonwealth under section 4941 of the Vehicle Code (relating to maximum gross weight of vehicles). This requirement is designed to help reduce the number of overweight waste vehicles traveling on roadways of this Commonwealth. While the Department will not use this part of the daily operational record to institute a direct enforcement action against a waste hauler for exceeding a roadway weight limit or against a waste facility for accepting an overweight vehicle, the Department may use the information in enforcing the daily volume limits at the facility, in selecting locations for routine vehicle inspections and in taking other steps toward reducing the number of overweight waste vehicles.

§ 273.313. Annual operation report.

Two commentators suggested that the proposed reporting changes that required the annual report to include plans showing cross sections was unnecessary and should be deleted because it could be obtained from topographic contour maps. The Board deleted this requirement in the final-form regulations because the information can be obtained through other requirements in the report.

The Board added subsection (b)(1)(iii) on final to require an annual reporting to the Department of radioactive materials detected at the landfill. This requirement was added to allow the Department to track the amount of radioactive material arriving at solid waste facilities and to use the data to better resolve the extent of the problem and for future problem solving.

§ 273.315. Recycling fee.

When the proposed rulemaking was published, the recycling fee had recently been extended under an amendment to the Administrative Code. Since then, the Environmental Stewardship and Watershed Protection Act further extended the fee. Because of the frequent statutory amendments, the Board has revised subsection (a) so that it no longer identifies a fee termination date, but instead states that the fee shall terminate in accordance with statute.

§ 273.316. Environmental stewardship fee.

This section used to be entitled "Site-specific postclosure trust fee," however, that fee is no longer collected, under the ESWPA, which passed after the regulations were proposed in 1998. The Board has therefore replaced the site-specific postclosure trust provisions with new Environmental Stewardship fee provisions. These provisions implement the new act and, where appropriate, borrow procedures from Act 101 and § 273.315 (relating to recycling fee) regarding collection of the recycling fee.

CLOSURE PROVISIONS

§ 273.322. Closure.

The Board deleted the proposed requirement in subsection (c)(2) that requires acceptance of the operator's selection of the remediation standard because the decision may be impacted by other closure considerations. The Board added subsections (e) and (f) to allow the Department to approve modifications to the frequency of groundwater sampling during the postclosure period if the operator demonstrates that the parameter has not caused or contributed to groundwater degradation and that the parameter is unlikely to cause or contribute to groundwater degradation in the future. The Board added subsection (g) to authorize the Department to reinstate the more frequent monitoring requirements for any parameter if the Department has reason to believe that the parameter may cause or contribute to groundwater degradation.

Subchapter E. ADDITIONAL OPERATING REQUIREMENTS FOR SPECIAL HANDLING AND RESIDUAL WASTES

SPECIFIC WASTES

§ 273.513. Sewage sludge.

One commentator suggested that the sewage sludge stabilization requirements reference the appropriate standards in Chapter 271. The Board agreed and amended this section to require that sewage sludge disposed at a landfill meet one of the processes to significantly reduce pathogens or to further reduce pathogens set forth in Chapter 271, Subchapter J, Appendix A and one of the vector attraction reduction standards in § 271.933(b). This is the minimum level of treatment needed to minimize odors and vectors during transportation and disposal.

Another commentator questioned why the requirements for disposal of sewage sludge at a landfill required the control of odors. The Board declined to make a change in

response to this comment as odors need to be controlled if sewage sludge is to be disposed at the facility.

CHAPTER 277. CONSTRUCTION/DEMOLITION WASTE LANDFILLS.

One commentator indicated that the construction/demolition waste requirements closely mirror the Class II residual waste requirements and suggested that the construction/demolition chapter be a subset of the residual waste regulations. The Board declined to make this change. While there are some parallel design concepts between the construction/demolition landfill requirements and the Class II residual waste landfill requirements, there are a number of differences due to the nature of residual and construction/demolition (municipal) waste.

Subchapter B. APPLICATION REQUIREMENTS PHASE I APPLICATION REQUIREMENTS

§ 277.110. Modification to expand existing landfill. (Proposed only.)

This section was added in the proposed rulemaking, but has been relocated to § 277.122 in the final-form rulemaking.

§ 277.112. Facility plan.

The Board added language in paragraph (2) to require the permit application for a municipal waste landfill to include a description of the method by which the soil necessary for construction and operation will be delivered. If soil is not located onsite, the traffic, access roads and other impacts need to be evaluated when performing the environmental assessment process.

§ 277.115. Geology and groundwater description.

Subsection (a)(3) was amended to allow alternative techniques for characterizing groundwater to be employed when the standard multiple well aquifer tests are not feasible. This allows the applicant to use alternative methods if unique hydrogeologic conditions are not conducive to standard testing techniques.

The Board also added language in subsection (a)(9) to allow the Department to require more frequent water level measurements after significant precipitation events. This information is necessary if the monthly measurements required by the regulations do not adequately represent the highest possible water levels which are needed to design the site.

§ 277.116. Groundwater quality description.

The Board amended subsection (a)(1) to add lead to the list of parameters analyzed during background groundwater monitoring. Lead is prevalent in construction/demolition waste and establishing the background is necessary to compare to future monitoring data.

§ 277.120. Mineral deposits information.

The Board amended the language in subsection (b) to require that the applicant either own the underlying mineable coal, or own the land or enter into an enforceable option contract to purchase land on which an expansion would operate and have an agreement with the owner of the coal to maintain support as long as waste remains on the site. These requirements are necessary to prevent failure of the landfill liner system should settlement occur into voids created by coal mining. Under the previous structure, the applicant was required to demonstrate that the owner of underlying mineable minerals would not mine the minerals as long as municipal waste remained on the site. The amendments remove the ambiguity of the term mineable mineral deposits and

instead apply the restrictions to mineable coals, which is the mineral most likely to be mined and is consistent with the mineral deposits information in the residual waste regulations. The amendments also provide some opportunity for existing facilities to expand on to areas where the applicant does not own the underlying coal.

§ 277.121. Notification of proximity to airport.

This section has been revised in the final-form rulemaking to be consistent with its municipal waste landfill corollary, § 273.121 (relating to notification of proximity to airport). The revision restricts construction of construction/demolition waste landfills within 6 miles of airports. Under the revisions, an applicant will have to notify and include copies of any notifications to the FAA, the airport and the Department of Transportation's Bureau of Aviation as well as any responses received from those entities. This information will assist the Department in determining whether construction of the facility or modification thereof would be safe. If any of the respondents expresses safety concerns, the applicant will generally be required to submit a mitigation plan under § 271.127 (relating to environmental assessment), at a minimum. The section has also been revised to apply to all applications for new landfills or expansions, not just to new landfills and lateral expansions, because the phrase "lateral expansions" was unnecessarily restrictive.

§ 277.122. Modification to expand existing landfill.

This section was proposed as § 277.110 and has been renumbered as § 277.122 for structural formatting purposes. The final text is identical to the proposed text.

**PHASE II APPLICATION REQUIREMENTS
GENERAL PROVISIONS**

§ 277.133. Map and grid requirements.

The Board added a requirement in new subsection (a)(14) that an application for a construction/demolition waste landfill indicate on the topographic map a designated area for vehicles for use in the event of the detection of waste containing radioactive material. This provision is the same as the provision added for municipal waste landfills, in § 273.133 (relating to map and grid requirements), which is discussed in more detail above.

§ 277.134. Plan for access roads.

A commentator indicated that the proposed modification to the access road application requirements was a performance standard and should be located in the operating requirements for access roads in § 277.213. The commentator also indicated that the proposed requirement that access roads be designed and constructed to adequately handle the truck traffic was not clear. The Board agreed and removed the proposed changes to this section.

§ 277.139. Daily volume.

A commentator opposed the setting of a maximum and average daily volume for construction/demolition sites and suggested that the average daily volume be calculated on a semiannual period. The Board declined to make the suggested changes. The operator needs to identify the average and maximum volumes to prepare the nuisance minimization and control plan and to evaluate the potential impact in the environmental assessment process. The quarterly computation requirement is consistent with the municipal waste landfill regulations.

§ 277.140. Radiation protection action plan.

The Board has added a new section in the final-form rulemaking requiring that an application for a

construction/demolition waste landfill contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, record keeping and reporting. This provision is the same as the provision added for municipal waste landfills, in § 273.140a (relating to radiation protection action plan), which was previously discussed in more detail.

**PHASE II APPLICATION REQUIREMENTS
COVER AND REVEGETATION**

§ 277.141. Compaction and cover plan.

The Board amended the language in paragraph (4) to require that the applicant identify procedures to establish the intermediate and final elevations for the landfill because this information is critical during the design and construction of the facility. This change is consistent with the municipal waste landfill requirements.

**PHASE II APPLICATION REQUIREMENTS
LINERS AND LEACHATE MANAGEMENT**

§ 277.161. Liner system and leachate control plan.

Several changes were made to the final-form regulations in this section.

The Board amended the existing liner testing properties to reflect current liner compatibility testing procedures. The following properties were added: density, carbon black content, carbon black dispersion, stress crack resistance and oxidative induction time. The following properties were deleted: the modulus of elasticity, impact resistance, operating temperature range, ozone resistance, water vapor transmission, coefficient of linear thermal expansion, and low temperature/brittleness.

Several commentators questioned why the proposed rulemaking required percent recycled material as a testing property and suggested that it be deleted unless this information is relevant. The Board declined to make the change. The percent recycled material can significantly vary during the manufacturing process which can change the performance of the liner.

**PHASE II APPLICATION REQUIREMENTS
CLOSURE PROVISIONS**

§ 277.192. Closure plan.

The Board replaced the phrase "toward and after closure" with "in preparation for closure and after closure." "Closure" is the point at which the entire facility permanently ceases to accept waste. It happens only once at a landfill. Under the final-form regulations, the application shall contain a plan describing the activities that are proposed to occur in preparation for closure and after closure and a narrative description of the measures that are proposed to be carried out.

**Subchapter C. OPERATING REQUIREMENTS
GENERAL PROVISIONS**

§ 277.201. Basic limitations.

This section has been revised in the final-form rulemaking to specify clearly the types of radioactive materials that might be found in the waste stream that may not be accepted at a construction/demolition waste landfill. These provisions are the same as the provisions added for municipal waste landfills, in § 273.201 (relating to basic limitations), which were previously discussed in detail.

§ 277.202. Areas where construction/demolition waste landfills are prohibited.

One commentator asked for clarification in the final-form rulemaking of whether the prohibitions against operating over mineable minerals will apply if the owner of the mineral rights guarantees that no mining will occur and for clarification of what prohibition applies to expansions of landfills that were permitted prior to the effective date of these final-form regulations. The isolation distances pertaining to minerals have been revised and clarified in the final-form regulations, consistent with the final revisions in § 273.202 (relating to areas where municipal waste landfills are prohibited). Portions of the old rule were retained, but new provisions were also added. The clarifications appear in subsections (a)(3) to (a)(5), all of which relate to coal now.

Under subsection (a)(3), an area that was permitted as a construction/demolition waste landfill between April 9, 1988, and the effective date of this final-form rulemaking remains subject to the rule in place during that time period and may not be operated in areas underlain by recoverable or mineable coals unless the operator of the facility demonstrates and the Department finds that the operator owns the underlying coal or has entered an agreement with the owner of the coal to provide support. The Board deleted the proposed language in paragraph (ii) that would have required the operator of a facility permitted on or after publication of the final-form regulation to own the underlying mineable minerals.

Under subsection (a)(4), a later expansion of a construction/demolition waste landfill that was permitted between April 9, 1988, and the effective date of this final-form rulemaking may not be operated in coal bearing areas underlain by recoverable or mineable coals unless the applicant satisfies one of two conditions. The first condition is that the applicant own the underlying coal. The second condition is that the applicant owned or entered into an enforceable option contract to purchase land on which the expansion would operate on or before the effective date of this final-form rulemaking and still holds the option rights, owns the land or owns the land under the option rights contract when the permit expansion is issued. In order to meet the second condition, the applicant must demonstrate in its application that coal providing support for the expansion area will not be mined as long as waste remains on the site.

Under subsection (a)(5), a new construction/demolition waste landfill permitted on or after the effective date of this final-form rulemaking may not be operated in coal-bearing areas underlain by recoverable or mineable coal, unless the permittee owns the underlying coal.

The Board made a number of changes to the occupied dwelling provisions of proposed subsection (a)(6), breaking it into four subsections, numbered (a)(8)—(11). The new provisions allow some flexibility for currently operating facilities and facilities expanding onto land already owned or under option rights on the effective date of these regulations, but impose the new isolation distance on new and reopened landfills.

Subsection (a)(8) addresses operations at existing facilities. Under the final-form regulations, these are subject to the old 300-foot setback. Disposal areas may not be closer than 500 feet except upon waiver by the owner of the dwelling.

Subsection (a)(9) addresses expansions of facilities where the facility was permitted before the effective date of this final-form rulemaking. Expansions must be 900

feet from an occupied dwelling unless the owner provides a written waiver that meets the requirements of this subparagraph (i) or the expansion will be on land owned by the applicant on the effective date of the regulations, subject to an enforceable option contract for purchase of the land on that date or purchased after the effective date of the regulations under an option contract entered into prior to the effective date. (Subparagraph (ii).) If the contract/option provision applies, the expansion may not be operated closer than 300 feet and the disposal area may not be within 500 feet of an occupied dwelling unless the applicant obtains a waiver as described in subparagraph (i).

New landfills will be subject to the 900-foot isolation distance, unless they obtain a waiver in accordance with subsection (a)(10). A closed landfill that submits an application to reopen and expand shall also be subject to this paragraph.

Access roads are not subject to the 900-foot isolation distance. Under subsection (a)(11), access roads are subject to a 300-foot setback. While an increase in the setback to 900 feet from landfill activity is necessary to address issues such as noise, dust and odors, these issues can continue to be adequately addressed for access roads with a 300-foot setback.

The Board amended subsection (a)(12) so that a construction/demolition waste landfill cannot be located within 100 feet of a perennial stream unless storage, processing and disposal will not occur within that distance and no adverse hydrologic or water quality impacts will occur. This change is consistent with the change in § 273.202 made in response to public comment.

The Board added a phrase at the end of subsection (a)(15), regarding the isolation distance from a school, park or playground to make this section consistent with its municipal waste corollary in § 273.202.

The Board added a new paragraph (16) to subsection (a) to prohibit a construction/demolition waste landfill from operating in a manner in which any portion of the landfill would be an obstruction to air navigation under 14 CFR 77.23(a)(5) (relating to standards for determining obstructions). This protects the "imaginary surfaces" which the Federal Aviation Administration protects under 14 CFR 77.25 (relating to civil airport imaginary surfaces) for safety reasons.

DAILY OPERATIONS

§ 277.211. Signs and markers.

One commentator suggested that the sign requirements should continue to require the name, address and telephone number of the organization operating the facility. The Board agrees and retains the name, business address and telephone number of the person or municipality that operates the facility, the operating hours and the permit identification number.

§ 277.214. Measurement and inspection of waste.

Subsection (a) has been amended to be consistent with the requirement for municipal waste landfills in § 273.214 (relating to measurement and inspection of waste).

§ 277.217. Air resources protection.

One commentator asked why the "air quality plan" and "air quality operating permit" need to be referenced in this section. The commentator suggested that if such references are necessary, appropriate regulatory citations should be provided. The Department retained the refer-

ences to assist operators in understanding their requirements and included appropriate regulatory cross references in the final-form rulemaking to indicate that an air quality plan approval and air quality operating permit are issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources).

§ 277.218. Nuisance minimization and control.

The Board amended subsection (b) to require the operator to minimize and control "public nuisances" from odors. The proposed subsection had only referenced "nuisances." Subsection (b) is now consistent with subsection (c). Similarly, to harmonize subsection (c) with (b), the requirement was added that the operator implement the plan approved under § 277.136 (relating to nuisance minimization and control plan). The Board did not revert to the "prevent and eliminate" language of the prior regulation as suggested by several commentators because field experience shows that nuisances cannot always be prevented. Finally, the Board reversed the order of subsections (b) and (c) for clarity.

§ 277.222. Radiation monitoring and response.

This new section has been added to the final-form rulemaking to address monitoring for and responding to radioactive materials in the construction/demolition waste stream. This section is the same as the section added for municipal waste landfills, § 273.223 (relating to radiation monitoring and response), which was previously discussed in more detail.

COVER AND REVEGETATION

§ 277.232. Intermediate cover and slopes.

The Board amended this section to require that nonfriable asbestos containing waste shall be covered within 24 hours after disposal. This provision is necessary to comply with Federal standards concerning the disposal of asbestos containing waste. The Board also amended subsection (e) to insert performance standards for establishing vegetation. This makes the revegetation standards in this subsection consistent with the rest of this section.

§ 277.233. Final cover and grading.

The Board made several changes to this section. Subsection (a) requires a cap to be placed over the waste, and it allows the Department to waive or modify the cap and drainage layer for construction/demolition landfills permitted prior to the effective date without liners. The Board removed the requirement that the cap limit the migration of precipitation into the landfill to the greatest degree that is technologically possible, and has moved the permeability requirement for the cap from the design to the performance standards. Subsection (c) has been amended to require that the cap have a permeability less than or equal to the permeability of the primary liner. This requirement is consistent with Federal Subtitle D requirements related to caps and will prevent the buildup of leachate during post closure activities. Subsection (d) has been modified to delete the reference to the design requirements for intermediate cover. This reference was not necessary because the design requirements for the 2 feet of soil above the drainage layer are specifically listed in this subsection.

One commentator questioned the proposed requirement that the caps should limit the migration of precipitation into the landfill to the greatest degree technologically possible. The Board agreed and has deleted the requirement.

WATER QUALITY PROTECTION

§ 277.241. General requirements.

The Board amended subsection (c) to clarify that the operator may not cause water pollution within or outside the site from the operation of the facility. This was added to be consistent with changes made to the municipal waste regulation in response to concerns that the proposed language appeared to not consider the possibility of offsite pollution entering the facility.

LINER SYSTEM

§ 277.251. Scope and requirements.

The Board amended subsection (a) to reference § 277.122 (relating to modification to expand existing landfill) which was § 277.110 in the proposed regulations. Several commentators suggested that requiring all new construction/demolition waste landfills to be lined was unnecessary as natural attenuation construction/demolition waste landfills can be operated without causing groundwater pollution due to the characteristics of the waste. The Board declined to make changes in response to this suggestion because the physical and chemical nature of construction/demolition waste is more complex and is generated from a greater variety of demolition projects and activities. It may not be possible to screen each waste load for contaminants that may have potential to degrade the groundwater at unlined facilities.

§ 277.252. General limitations.

The Board amended subsection (c) to clarify that in confined layers at least 8 feet shall be maintained between the bottom of the liner system and where groundwater occurs in confined layers as the result of upward leakage. The term "upward" was added to clarify the intent.

The Board added requirements in subsections (d)-(f) to clarify the construction of berms and the placement of waste in relation to the berms. These were added to identify which requirements applied to temporary berms and perimeter berms.

§ 277.253. Subbase.

The Board amended subsection (b)(4) to clarify that the postsettlement slope for the subbase must be at least 2% and no more than 33%. This change was added to be consistent with the subbase requirements for municipal waste landfills and is critical to the design of the liner system.

§ 277.254. Leachate detection zone.

The Board amended subsection (b)(6) to remove the requirement that the stones or aggregates used to construct the detection zone be noncarbonate. This concern is addressed in the performance standards, which require the zone to be able to withstand chemical attack and function without clogging.

The proposed changes to subsection (d) concerning flow in the leachate detection zone were deleted. The current requirement, which requires the operator to test any leakage in the zone, was retained because this testing is used to determine whether the leakage is leachate. Subsection (e) was amended to require that the flow calculation be based upon the flow in a lined collection area instead of the entire lined area. This can be used to more effectively address the leak on a localized basis.

One commentator indicated that the proposed 10-gallon-per-day threshold would be routinely exceeded. The Board declined to make these changes. The final-form

regulations maintain the current language because it is necessary to characterize any flow in the leachate detection zone. If the flow is leachate, further analysis of the integrity of the primary liner may be necessary.

§ 277.255. Liner.

The Board made several amendments in this section and the corresponding Table I. Subsection (d) was amended to clarify that liners made of clay shall be compacted in 6-inch lifts unless data from a field demonstration validates the suitability of compacted lifts greater than 6 inches. The Board amended subsection (e) and Table I to clarify that the upper component of a composite liner is a geosynthetic liner. The Board modified Table I to allow the composite component to be constructed of natural or remolded clay, bentonite or be part of a geosynthetic clay liner. These materials are commonly used as composite components and are consistent with the options available in the municipal waste landfill regulations.

§ 277.256. Protective cover.

The Board deleted the design standard in subsection (b)(2) which required that the protective cover be graded. This design requirement was not necessary.

§ 277.257. Leachate collection system within protective cover.

The Board deleted the proposed requirement in subsection (a)(2) which allowed the leachate depth on the primary liner to exceed 1 foot in depth in certain instances. This requirement was inconsistent with the Federal municipal waste landfill requirements in Subtitle D and, therefore, was changed in Chapter 273. The Board is changing it in Chapter 277 to be consistent with the municipal waste regulations.

The Board amended subsection (b)(4) to delete the requirement that stones or aggregates in the leachate collection zone be non-carbonate. The performance standards in subsection (a) address this issue by requiring that the collection system be able to withstand chemical attack from the leachate. Subsection (b)(4) was also modified to require the leachate collection system to contain stones or aggregates while the Board deleted the requirement that the stones or aggregates be placed around the pipes within the zone. The Board added the requirement in subsection (b)(5) that the leachate collection pipes have a postsettlement grade of at least 2% because it is necessary for the pipes to evacuate the leachate by gravity.

LEACHATE TREATMENT

§ 277.275. Leachate collection and storage.

The Board amended subsection (g) to apply the new requirements for the design of underground leachate pipes to facilities permitted after the effective date of the regulations. The new pipes must have secondary containment or comply with alternative methods of release detection identified in the underground storage tank regulations.

§ 277.276. Leachate analysis and sludge handling.

The Board amended the proposed changes to subsection (a)(2) to not allow a reduction in the quarterly leachate chemical analyses testing requirements. It is necessary to have current information on the leachate quality to determine such things as the impact of the leachate on the liner system, the effectiveness of the leachate treatment system, and the need for additional groundwater monitoring.

WATER QUALITY MONITORING

§ 277.283. Standards for wells and casing of wells.

The Board added new subsection (c)(7) to allow for alternative well casing designs in stable formations, if approved by the Department. This provides some design flexibility based upon the tightness of the hydrogeologic formation.

§ 277.286. Groundwater assessment plan.

The Board amended subsection (c)(1) to clarify that groundwater monitoring devices installed at the point of compliance must be constructed in accordance with the design requirements for detection monitoring wells. Monitoring wells need to be constructed to the standards established for detection monitoring wells so that the groundwater information gathered is consistent and can be compared to data from other wells.

§ 277.287. Abatement plan.

On final-form rulemaking, the Board added an introductory clause to subsection (d)(4), that was inadvertently excluded in the proposed rulemaking. The Board amended subsection (d)(4)(v) to address the abatement levels for systemic toxicants. This is necessary to address action levels for parameters where MCL's have not been established.

RECORDKEEPING AND REPORTING

§ 277.311. Daily operational records.

Subsection (b)(10) has been added on final to require information to be kept in the daily record describing radioactive materials detected in waste loads. This requirement is the same as the requirement added for municipal waste landfills, in § 273.311 (relating to daily operational records), which is discussed in more detail above.

Subsection (b)(11) has been added on final to require a landfill operator to identify vehicles that have arrived at the landfill over the maximum gross weight allowed on roadways of this Commonwealth under section 4941 of the Vehicle Code. This requirement is designed to help reduce the number of overweight waste vehicles traveling on roadways of this Commonwealth. While the Department will not use this part of the daily operational record to institute a direct enforcement action against a waste hauler for exceeding a roadway weight limit or against a waste facility for accepting an overweight vehicle, the Department may use the information in enforcing the daily volume limits at the facility, in selecting locations for routine vehicle inspections and in taking other steps toward reducing the number of overweight waste vehicles.

§ 277.312. Annual operation report.

The Board added subsection (b)(9) on final to require an annual reporting to the Department of radioactive materials detected at the landfill. This requirement was added to allow the Department to track the amount of radioactive material arriving at solid waste facilities and to use the data to better resolve the extent of the problem and for future problem solving.

§ 277.322. Closure.

The Board deleted the proposed requirement in subsection (c)(2) that requires acceptance of the operator's selection of the remediation standard because the decision may be impacted by other closure considerations. The Board added subsections (e) and (f) to allow the Department to approve modifications to the frequency of groundwater sampling during the post closure period if the

operator demonstrates that the parameter has not caused or contributed to groundwater degradation and that the parameter is unlikely to cause or contribute to groundwater degradation in the future. The Board added subsection (g) to authorize the Department to reinstate the more frequent monitoring requirements for any parameter if the Department has reason to believe that the parameter may cause or contribute to groundwater degradation.

One commentator questioned why the remediation standards do not reference the cleanup standards in Chapter 250 (relating to the land recycling program). The Board declined to make changes to address this. The remediation standards incorporated into this rulemaking parallel the Federal requirements and are identical to those that apply to municipal waste landfills, which are Federally mandated.

CHAPTER 279. TRANSFER FACILITIES.

Subchapter B. APPLICATION REQUIREMENTS FOR TRANSFER FACILITIES

GENERAL

§ 279.102. Operating plan.

The Board amended subsection (c), requiring that safety measures to prevent injuries be part of the facility operating plan. The Board added subsection (f), requiring that procedures for inspection and monitoring of incoming waste be included in the application.

§ 279.103. Maps and related information.

The Board added a requirement in new subsection (a)(8) that an application for a transfer facility indicate on the topographic map a designated area for vehicles for use in the event of detection of waste containing radioactive material. This provision is the same as the provision added for municipal waste landfills, in § 273.133 (relating to map and grid requirements), which was previously discussed in more detail.

§ 279.104. Plan for access roads.

A comment was received for facilities other than transfer facilities that the proposed requirement that access road design include adequate handling of traffic flow to a facility is vague, as it does not provide clear standards. The Board agreed with this comment and has deleted the proposed requirement for all waste facilities, including transfer stations.

§ 279.105. Soil erosion and sedimentation control plan.

The Board added the term "erosion and sedimentation control" to the title, as this is more descriptive of the contents of the section.

§ 279.110. Radiation protection action plan.

The Board has added a new section in the final-form rulemaking requiring that an application for a transfer facility contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting. This provision is the same as the provision added for municipal waste landfills, in § 273.140a (relating to radiation protection action plan), which was previously discussed in more detail.

§ 279.111. Daily volume.

The Board added a new section requiring the applicant to state and justify a proposed maximum daily volume. This requirement builds on practices already in place and is drawn from § 273.140 (relating to daily volume) of the

municipal waste landfill chapter. Establishing daily volumes involves, in part, analyzing odors, facility traffic and other factors under the environmental assessment of § 271.127 (relating to environmental assessment).

Subchapter C. OPERATING REQUIREMENTS FOR TRANSFER FACILITIES

GENERAL PROVISIONS

§ 279.201. Basic limitations.

This section has been revised in the final-form rulemaking to specify clearly the types of radioactive materials that might be found in the municipal waste stream that may not be accepted at a transfer facility. These provisions are the same as the provisions added for municipal waste landfills, in § 273.201 (relating to basic limitations), which were previously discussed in more detail.

§ 279.202. Areas where transfer facilities are prohibited.

The Board revised the isolation distance of a transfer facility from a perennial stream in subsection (a)(4) to add an option consistent with revised § 273.202 (relating to areas where municipal waste landfills are prohibited). Under this option, in subparagraph (i), a transfer facility cannot be located within 100 feet of a perennial stream unless storage and processing will not occur within that distance and no adverse hydrologic or water quality impacts will occur. The Board also revised the option in subparagraph (iii) to require that if the transfer facility transfers waste to barges at the transfer facility location, the waste must be containerized. This provision is designed to ensure that the stream is protected from the potential of runoff from precipitation and spillage that could occur through routine operations or accidents.

One commentator questioned why the language allowing a transfer facility to operate within 50 feet of a property line if waste processing is not occurring within that distance was proposed to be deleted. The commentator also asked whether the 50-foot prohibition applies to access roads. In the final-form rulemaking, this subsection has been revised to allow a transfer facility to operate within 50 feet of a property line if the operator demonstrates that actual processing of waste is not occurring within that distance. This would allow access roads to be located within 50 feet of a property line. The final-form rulemaking also allows storage and processing to occur within 50 feet of a property line if the storage and processing take place in an enclosed facility.

DAILY OPERATIONS

§ 279.211. Signs and markers.

One commentator suggested that the sign requirements should continue to require the name, address and telephone number of the organization operating the facility. The Board agrees and retains the name, business address and telephone number of the person or municipality that operates the facility, the operating hours and permit identification number.

§ 279.214. Measurement and inspection of waste.

The Board amended this section to be consistent with the other chapters in this article. A transfer facility must inspect and monitor incoming waste to ensure that the receipt of waste is consistent with Article VIII and, if the facility receives 30,000 or more cubic yards of solid waste in a calendar year, the facility shall weigh the waste when it is received. Standards for the weigh scale and a licensing requirement for the operator of the scale are included.

§ 279.215. Operations and equipment.

A commentator stated that deleting the requirement that standby equipment be available within 24 hours weakens this section since the purpose of transfer is one of convenience. The commentator suggested that if the transfer station is not fully functional, then the requirement should be redirection of the waste loads to another facility. The Board declined to make an additional change because it is up to the facility operator to determine how the operation of the facility can be maintained in times of equipment breakdown, as long as harm to persons or the environment is not a threat.

The inspection and monitoring requirement that was proposed to be added in this section has been deleted because it was moved into § 279.214 (relating to measurement and inspection of waste). The requirement to monitor and inspect incoming waste for radioactive isotopes was deleted. In response to public comments received on this section, this requirement was refined and moved to various other sections throughout the final-form rulemaking.

A commentator submitted comments on subsection (c). The commentator suggested that the Board clarify the amount of inspection necessary for an operator to determine the characteristics of incoming waste. The Board has clarified this in § 279.110 (relating to radiation protection action plan) and § 279.222 (relating to radiation monitoring and response). More detailed information on monitoring and inspection is provided in the Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, document number 250-3100-001, which is cross referenced in these sections.

The commentator requested that the specific level that would trigger rejection of a load of waste containing radioactive material be stated in the regulations. In response to this comment, the Board included in § 279.222 the levels at which an operator must immediately isolate a vehicle and notify the Department. One level is for radiation dose rates detected in the cab and the other level is for radiation detected from any other surface.

Once notified, the Department staff and possibly staff from Federal agencies will assist the facility and its consultants in identifying, localizing and quantifying the radioactive material in the load. This is a stepwise investigative process that will ultimately determine what corrective action is needed. The entire problem may be in one bag or the whole load may require disposal. These procedures are further described in the guidance document previously mentioned. It is noted that there is a lower alarm level which calls for the facility to investigate the problem in accordance with its approved action plan, guidelines for which are set forth in the guidance document. In the range between this lower alarm level (Action Level I) and the levels above where the Department is called immediately (Action Level II), a facility has a variety of options available, including rejection of the load and sending it back to origin providing that a Department of Transportation Exemption is obtained from the Department. At levels at or above Action Level II, special handling of the radioactive material will be required and simple rejection is not permissible.

The commentator also asked the Board to examine the costs and capital necessary for transfer facilities to monitor and inspect waste for radioactive material. The commentator asked that the Board consider establishing a

reasonable time frame for compliance with the new regulations if the costs were significant. In response, the Department analyzed the costs necessary to inspect for radioactive materials and determined that the costs of installing the equipment and implementing the required procedures is minimal compared to the costs associated with managing radioactive wastes that have been improperly disposed in a landfill or resource recovery facility. Nevertheless, to accommodate the transition, the Board included a new section, § 271.114 (relating to transition period), which establishes a schedule by which each regulated facility is to come into compliance with the new requirements.

§ 279.219. Nuisance minimization and control.

The Board amended the title of this section to be consistent with the revisions made to this section in the proposed rulemaking and to be consistent with the other chapters. The Board also deleted the unnecessary word "also" from the proposed revision to subsection (b).

§ 279.222. Radiation monitoring and response.

This new section has been added to the final-form rulemaking to address monitoring for and responding to radioactive materials in the municipal waste stream. This section is the same as the section added for municipal waste landfills, § 273.223 (relating to radiation monitoring and response), which was previously discussed in more detail.

§ 279.223. Daily volume.

The Board added to the final-form regulations an operating requirement based on the general application requirement concerning daily volume proposed for acceptance at a facility (§ 279.111).

SOIL AND WATER PROTECTION

§ 279.233. Soil and groundwater monitoring.

The Board amended this section and added new language clarifying that water quality monitoring requirements, assessment and abatement plans and recordkeeping requirements are the same as in Chapter 273. This was done by cross-referencing those sections from Chapter 273. Subsection (b) was added to clarify certain terms from Chapter 273 as they apply to a transfer station.

RECORDKEEPING AND REPORTING

§ 279.251. Daily operational records.

Subsection (b)(11) has been added on final to require information to be kept in the daily record describing radioactive materials detected in waste loads. This requirement is the same as the requirement added for municipal waste landfills, in § 273.311 (relating to daily operational records), which is discussed in more detail above.

§ 279.252. Annual operation report.

The Board added subsection (b)(6) on final to require an annual reporting to the Department of radioactive materials detected at a transfer facility. This requirement was added to allow the Department to track the amount of radioactive material arriving at solid waste facilities and to use the data to better resolve the extent of the problem and for future problem solving.

CESSATION AND CLOSURE

§ 279.262. Cessation of operations.

The Board added language in § 279.262(c) to incorporate the remediation standards in § 271.342(b)(4) for

final closure certification for the Department when considering whether to discontinue groundwater monitoring.

CHAPTER 281. COMPOSTING FACILITIES.

Subchapter A. GENERAL

§ 281.1. Scope.

A commentator believes that the current regulations deter the development of composting facilities due to the bonding requirements that are in place. The commentator stated that as they are currently written, the regulations treat composting facilities like trash handling facilities for bonding purposes. The commentator added that composting facilities and landfills are very different entities yet they carry the same bonding conditions. The Board does not agree that any change is required in response to these comments. In developing the bonding forms, the Department must account for the cost to remediate the site should remediation become necessary. For composting, the bond is primarily based upon the cost to transport and dispose of the waste to a municipal waste landfill. The bonding forms are generic enough to account for each site's design and operating procedures when determining bonding costs.

Subchapter B. APPLICATION REQUIREMENTS FOR GENERAL COMPOSTING FACILITIES

PLANS

§ 281.111. Operating plan.

The Board added paragraph (11) requiring that procedures for inspection and monitoring of incoming waste be included in the application.

§ 281.112. Maps and related information.

The Board added a requirement in new subsection (a)(20) that an application for a commercial composting facility that will receive sewage sludge or unseparated municipal waste, or both, indicate on the topographic map a designated area for vehicles for use in the event of the detection of waste containing radioactive material. This provision is the same as the provision added for municipal waste landfills, in § 273.133 (relating to map and grid requirements), which is discussed in more detail above.

§ 281.115. Plan for access roads.

A commentator objected to the addition of a road specification to the plan and the phrase "adequately handle". The comment suggested that any access road specification should properly be addressed in § 281.212. The Board agrees on both issues. The proposed language has been deleted from § 281.115, retaining the current regulatory language only. No additional changes are incorporated into § 281.212 from the proposed rulemaking.

§ 281.119. Radiation protection action plan.

The Board has added a new section in the final-form rulemaking requiring that an application for a commercial composting facility that will receive sewage sludge or unseparated municipal waste, or both, contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting. This provision is the same as the provision added for municipal waste landfills, in § 273.140a (relating to radiation protection action plan), which was previously discussed in more detail. This section has also been added in Chapters 277, 279 and 283.

COMPOSTING

§ 281.123. Daily volume.

The Board added a new section requiring the applicant to state and justify a proposed maximum daily volume. This builds on practices already in place and is drawn from § 273.140 (relating to daily volume) of the municipal waste landfill chapter. Establishing daily volumes involves, in part, analyzing odors, facility traffic and other factors under the environmental assessment of § 271.127 (relating to environmental assessment).

Subchapter C. OPERATING REQUIREMENTS FOR GENERAL COMPOSTING FACILITIES

GENERAL PROVISIONS

§ 281.201. Basic limitations.

This section has been revised in the final-form rulemaking to specify clearly the types of radioactive materials that might be found in the waste stream that may not be accepted at a general composting facility. These provisions are the same as the provisions added for municipal waste landfills, in § 273.201 (relating to basic limitations), which were previously discussed in more detail.

§ 281.202. Areas where general composting facilities are prohibited.

The Board revised the isolation distance of a general composting facility from a perennial stream in subsection (a)(4) to add an option consistent with revised § 273.202 (relating to areas where municipal waste landfills are prohibited). Under this option, in subparagraph (i), a general composting facility cannot be located within 100 feet of a perennial stream unless storage and processing will not occur within that distance and no adverse hydrologic or water quality impacts will occur.

In the final-form rulemaking, the setback from a property line in subsection (a)(5) has been revised to allow a general composting facility to operate within 50 feet of a property line if the operator demonstrates that actual processing of waste is not occurring within that distance. This would allow access roads to be located within 50 feet of a property line. The final-form rulemaking also allows storage and processing to occur within 50 feet of a property line if the storage and processing take place in an enclosed facility.

DAILY OPERATIONS

§ 281.211. Signs and markers.

One commentator suggested that the sign requirements should continue to require the name, address and telephone number of the organization operating the facility. The Board agrees and retains the name, business address and telephone number of the person or municipality that operates the facility, the operating hours and permit identification number.

§ 281.214. Measurement and inspection of waste.

The Board amended the word "measuring" in the title to "measurement," to be consistent with other chapters.

Subsection (a) has been amended to reflect the repeal of the Weights and Measures Act of 1965 and the Public Weighmasters Act of 1961. Both acts were replaced with the Consolidated Weights and Measures Act of 1996.

Subsection (c) has been amended to delete the requirement to monitor and inspect incoming waste for radioactive isotopes. In response to public comments received on subsection (c), this requirement was refined and moved to the various other sections throughout the final-form

rulemaking. For further discussion, see § 273.214 (relating to measurement and inspection of waste).

§ 281.218. Nuisance minimization and control.

The Board amended the title of this section to be consistent with the revisions made to this section in the proposed rulemaking and to be consistent with the other chapters.

One commentator suggested that changing words "prevent and eliminate" to "control and minimize" does not afford an equal level of protection. The Board declined to make changes to address this comment because experience shows that nuisances cannot always be prevented.

§ 281.221. Radiation monitoring and response.

This new section has been added to the final-form rulemaking to address monitoring for and responding to radioactive materials in the municipal waste stream. This section is the same as the section added for municipal waste landfills, § 273.223 (relating to radiation monitoring and response), which was previously discussed in more detail.

§ 281.222. Daily volume.

The Board added to final-form regulations an operating requirement based on the general application requirement concerning daily volume proposed for acceptance at a facility (§ 281.123).

SOIL AND WATER PROTECTION

§ 281.254. Soil and groundwater monitoring.

The Board amended this section and added new language clarifying that water quality monitoring requirements, assessment and abatement plans and recordkeeping requirements are the same as in Chapter 273. This was done by cross referencing those sections from Chapter 273. Subsection (b) was added to clarify certain terms from Chapter 273 as they apply to composting facilities.

RECORDKEEPING AND REPORTING

§ 281.271. Daily operational records.

Subsection (b)(9) has been added on final to require information to be kept in the daily record describing radioactive materials detected in waste loads. This requirement is the same as the requirement added for municipal waste landfills, in § 273.311 (relating to daily operational records), which was previously discussed in more detail.

§ 281.272. Annual operation report.

The Board added subsection (b)(9) on final to require an annual reporting to the Department of radioactive materials detected at a general composting facility. This requirement was added to allow the Department to track the amount of radioactive material arriving at solid waste facilities and to use the data to better resolve the extent of the problem and for future problem solving.

CESSATION AND CLOSURE

§ 281.282. Cessation of operations.

The Board added language in § 281.282(d) to incorporate the remediation standards in § 271.342(b)(4) for final closure certification for the Department when considering whether to discontinue groundwater monitoring.

CHAPTER 283. RESOURCE RECOVERY AND OTHER PROCESSING FACILITIES

A commentator indicated that no air quality regulations address the incineration of municipal waste in conjunction with municipal-like residual waste or for that matter,

with residual waste. The commentator stated that while it could be argued that the incinerator operator will still have to meet permit emission levels, only a limited number of toxic metals are tested twice a year; the extremely toxic dioxin and furans are tested only once a year, and many organics and inorganics are never even measured. The commentator also noted that while some permits call for a representative sample of municipal-like residual waste to be included in test samples, no criteria are listed in permits or guidance. The commentator stated it would be nearly impossible to find a representative sample with such a variable and unpredictable waste stream. The commentator added that such an undertaking could destroy the validity of an incinerator operator's testing program. The Board did not change the regulations because the regulations require the applicant to identify the composition and volume of waste that is to be received at the facility. This information is available to and used by the programs within the Department that are required to approve or issue a permit for the operation of the facility.

Another commentator noted that the EPA and the Department's Bureau of Air Quality have recently adopted air quality standards for municipal waste combustors that incorporate a true performance-based capacity limit that is based upon a recent Federal rule. The commentator proposed that the municipal waste regulations also reflect the concept of a performance-based capacity limit. Specifically, the commentator stated that the 4-hour steam limit is set at 110% of the steam production rate achieved during the most recent dioxin emissions testing and the regulations should establish short-term throughput limits in terms of steam produced rather than waste tonnage. The commentator suggested that such a limit quantitatively relates plant capacity with demonstrated environmental performance, and is consistent with the stated goals of the RBI. The Board did not change the regulations because, while short-term throughput, expressed in terms of steam produced, may be appropriate to limit combustor capacity, the Department also considers the impact that the daily volume, expressed as waste tonnage, has on the storage and transportation of waste when issuing waste permits.

Subchapter B. APPLICATION REQUIREMENTS GENERAL PROVISIONS

§ 283.103. Maps and related information.

The Board added a requirement in new paragraph (20) that an application for a resource recovery facility or other processing facility indicate on the topographic map a designated area for vehicles for use in the event of the detection of waste containing radioactive material. This provision is the same as the provision added for municipal waste landfills, in § 273.133 (relating to map and grid requirements), which is discussed in more detail above.

§ 283.105. Plan for access roads.

A comment was received for facilities other than resource recovery or processing facilities that the proposed requirement that access road design include adequate handling of traffic flow to a facility is vague as it does not provide clear standards. The Board agreed with this comment and has deleted the proposed requirement for all waste facilities, including resource recovery or processing facilities.

§ 283.113. Radiation protection action plan.

The Board has added a new section in the final-form rulemaking requiring that an application for a resource

recovery facility or other processing facility contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting. This provision is the same as the provision added for municipal waste landfills, in § 273.140a (relating to radiation protection action plan), which was previously discussed in more detail.

§ 283.114. Daily volume.

The Board added a new section requiring the applicant to state and justify a proposed maximum daily volume. This builds on practices already in place and is drawn from § 273.140 (relating to daily volume) of the municipal waste landfill chapter. Establishing daily volumes involves, in part, analyzing odors, facility traffic and other factors under the environmental assessment of § 271.127 (relating to environmental assessment).

**Subchapter C. OPERATING REQUIREMENTS
GENERAL PROVISIONS**

§ 283.201. Basic limitations.

This section has been revised in the final-form rulemaking to specify clearly the types of radioactive materials that might be found in the waste stream that may not be accepted at a processing facility. These provisions are the same as the provisions added for municipal waste landfills, in § 273.201 (relating to basic limitations), which were previously discussed in more detail.

§ 283.202. Areas where resource recovery facilities and other processing facilities are prohibited.

The Board corrected an error in subsection (a)(4) concerning the isolation distance from a perennial stream by deleting the reference to an intermittent stream. The Board also deleted the redundant reference to a perennial stream.

The Board revised the isolation distance from a property line to be consistent with § 279.202 (relating to areas where transfer facilities are prohibited).

DAILY OPERATIONS

§ 283.211. Signs and markers.

One commentator suggested that the sign requirements should continue to require the name, address and telephone number of the organization operating the facility. The Board agrees and retains the name, business address and telephone number of the person or municipality that operates the facility, the operating hours and permit identification number.

§ 283.214. Measurement and inspection of waste.

Subsection (a) has been amended to reflect the repeal of the Weights and Measures Act of 1965 and the Public Weighmasters Act of 1961. Both acts were replaced with the Consolidated Weights and Measures Act of 1996.

Subsection (c) has been amended to delete the requirement to monitor and inspect incoming waste for radioactive isotopes. In response to public comments received on subsection (c), this requirement was refined and moved to the various other sections throughout the final-form rulemaking. For further discussion, see § 273.214 (relating to measurement and inspection of waste).

§ 283.217. Cleaning and maintenance.

A commentator objects to limiting storage of putrescible waste at a waste-to-energy facility to 24 or 72 hours, stating that these time limits are shorter than what is practical and they are unnecessary. The commentator

requests that either the Board delete the storage time limits or extend them up to 120 hours, justifying that environmental impacts associated with waste storage (odor, fugitive emissions, vector control and liner) are adequately addressed in other regulations. The Board disagrees. To minimize the potential for nuisance problems, putrescible waste needs to be removed in the shortest time practicable. While a system can be possibly designed to accommodate a longer time period, the potential and likelihood of problems occurring is greatly increased. The proposed and final period of 72-hours accounts for 3-day weekends when the facility may not be operating.

§ 283.218. Air resources protection.

A commentator expressed two concerns with this section. First, the need to reference the guidance document should be explained since resource recovery facilities must already meet the requirements contained in the Air Pollution Control Act (35 P. S. §§ 4001—4015) and the Federal Clean Air Act. Second, if there is a need to reference the guidance document in this rulemaking, the Board needs to assure that the document is consistent with the Federal regulations. A second commentator believes this reference should be removed and that the BAT Guidelines are inconsistent with the new Federal air emission standards established for waste-to-energy facilities. The BAT guidelines are not regulations and have not undergone the formal regulatory process of public notice and public commentary.

The Board agrees that the Bureau of Air Quality's BAT Guidelines should not be incorporated by reference into this subsection. Therefore, the proposed language in § 283.218 pertaining to "the most recent edition of the Department's criteria for best available technology" was not included in the final-form rulemaking. The deletion of language pertaining to BAT Guidelines from this rulemaking, however, does not relieve the owners or operators of new sources from their obligation to comply with applicable BAT requirements authorized by the Air Pollution Control Act and regulations adopted under the act.

§ 283.220. Radiation monitoring and response.

This new section has been added to the final-form rulemaking to address monitoring for and responding to radioactive materials in the municipal waste stream. This section is the same as the section added for municipal waste landfills, § 273.223 (relating to radiation monitoring and response), which was previously discussed in more detail.

§ 283.223. Daily volume.

The Board added an operating requirement based on the general application requirement for daily volume (§ 283.114).

SOIL AND WATER PROTECTION

§ 283.233. Soil and groundwater monitoring.

The Board amended this section and added new language clarifying that water quality monitoring requirements, assessment and abatement plans and recordkeeping requirements are the same as in Chapter 273. This was done by cross-referencing those sections from Chapter 273. Subsection (b) was added to clarify certain terms from Chapter 273 as they apply to resource recovery or processing facilities.

RECORDKEEPING AND REPORTING

§ 283.261. Daily operational records.

Subsection (b)(11) has been added on final to require information to be kept in the daily record describing

radioactive materials detected in waste loads. This requirement is the same as the requirement added for municipal waste landfills, in § 273.311, which was previously discussed in more detail.

Subsection (b)(12) has been added on final to require a facility operator to identify vehicles that have arrived at the facility over the maximum gross weight allowed on the roadways of this Commonwealth under section 4941 of the Vehicle Code. This requirement is designed to help reduce the number of overweight waste vehicles traveling on the roadways of this Commonwealth. While the Department will not use this part of the daily operational record to institute a direct enforcement action against a waste hauler for exceeding a roadway weight limit or against a waste facility for accepting an overweight vehicle, the Department may use the information in enforcing the daily volume limits at the facility, in selecting locations for routine vehicle inspections and in taking other steps toward reducing the number of overweight waste vehicles.

§ 283.262. *Annual operation report.*

The Board added subsection (b)(6) on final to require an annual reporting to the Department of radioactive materials detected at a resource recovery facility or other processing facility. This requirement was added to allow the Department to track the amount of radioactive material arriving at solid waste facilities and to use the data to better resolve the extent of the problem and for future problem solving.

§ 283.264. *Recycling fee.*

When the proposed regulations were published, the recycling fee had recently been extended under an amendment to the Administrative Code. Since then, the ESWPA further extended the fee. Because of the frequent statutory amendments, the Board has revised subsection (a) so that it no longer identifies a fee termination date, but instead states that the fee shall terminate in accordance with statute.

CESSATION AND CLOSURE

§ 283.272. *Cessation of operations.*

The Board added language in subsection (c) to incorporate the remediation standards in § 271.342 (b)(4) for final closure certification for the Department when considering to discontinue groundwater monitoring.

Subchapter D. ADDITIONAL APPLICATION REQUIREMENTS FOR SPECIAL HANDLING WASTES

§ 283.302. *(Reserved).*

This section has been relocated to § 284.311.

Subchapter E. ADDITIONAL OPERATING REQUIREMENTS FOR SPECIAL HANDLING WASTES

§ 283.402. *(Reserved).*

This section has been relocated to § 284.321.

CHAPTER 284. INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

The proposed rulemaking requested comments regarding consideration by the Department to consolidate the infectious and chemotherapeutic waste regulations into one chapter. Six commentators strongly recommended that, for purposes of clarity and ease of use, the infectious and chemotherapeutic waste regulations should be consolidated. A consolidation is clearly within the scope and

spirit of the Governor's Executive Order 1996-1 and the Regulatory Basics Initiative. The Board agrees. The final-form rulemaking consolidates infectious and chemotherapeutic waste requirements into this chapter.

Two commentators objected to the use of general permitting across the board, and especially when infectious waste is the subject. The Board affirms that the general permitting process is appropriate for the approval of new infectious waste processing technologies. Only the generator of the waste will qualify for general permit coverage, and the general permit will only be issued for the processing of infectious waste at doctor's offices, hospitals or other medical treatment facilities.

For the reader's ease, the Department has created the following table, which cross-references the old location and new location of the regulations in this chapter:

ICW Regulations in Chapter 284

<i>Former Pa. Code Reference</i>	<i>New Pa. Code Reference</i>
Title 25, § 271.102	Title 25, § 284.2
Title 25, § 271.711	Title 25, § 284.101
Title 25, § 271.712	Title 25, § 284.102
Title 25, § 271.721	Title 25, § 284.111
Title 25, § 271.722	Title 25, § 284.112
Title 25, § 271.723	Title 25, § 284.113
Title 25, § 271.724	Title 25, § 284.114
Title 25, § 271.725	Title 25, § 284.115
Title 25, § 271.731	Title 25, § 284.121
Title 25, § 271.732	Title 25, § 284.122
Title 25, § 271.741	Title 25, § 284.131
Title 25, § 271.742	Title 25, § 284.132
Title 25, § 271.743	Title 25, § 284.133
Title 25, § 283.302	Title 25, § 284.311
Title 25, § 283.402	Title 25, § 284.321
Title 25, § 285.132	Title 25, § 284.419
Title 25, § 285.142	Title 25, § 284.411
Title 25, § 285.143	Title 25, § 284.412
Title 25, § 285.144	Title 25, § 284.413
Title 25, § 285.145	Title 25, § 284.414
Title 25, § 285.146	Title 25, § 284.415
Title 25, § 285.147	Title 25, § 284.416
Title 25, § 285.148	Title 25, § 284.417
Title 25, § 285.222	Title 25, § 284.512
Title 25, § 285.223	Title 25, § 284.513
Title 25, § 285.224	Title 25, § 284.514
Title 25, § 285.301	Title 25, § 284.601
Title 25, § 285.302	Title 25, § 284.602
Title 25, § 285.303	Title 25, § 284.603
Title 25, § 285.311	Title 25, § 284.611
Title 25, § 285.312	Title 25, § 284.612
Title 25, § 285.321	Title 25, § 284.621
Title 25, § 285.322	Title 25, § 284.622
Title 25, § 285.323	Title 25, § 284.623
Title 25, § 285.324	Title 25, § 284.624
Title 25, § 285.325	Title 25, § 284.625
Title 25, § 285.331	Title 25, § 284.631
Title 25, § 285.332	Title 25, § 284.632
Title 25, § 285.333	Title 25, § 284.633
Title 25, § 285.334	Title 25, § 284.634
Title 25, § 285.341	Title 25, § 284.641
Title 25, § 285.342	Title 25, § 284.642
Title 25, § 285.343	Title 25, § 284.643
Title 25, § 285.344	Title 25, § 284.644
Title 25, § 285.345	Title 25, § 284.645
Title 25, § 285.401	Title 25, § 284.701
Title 25, § 285.402	Title 25, § 284.702
Title 25, § 285.403	Title 25, § 284.703
Title 25, § 285.411	Title 25, § 284.711

<i>Former Pa. Code Reference</i>	<i>New Pa. Code Reference</i>
Title 25, § 285.412	Title 25, § 284.712
Title 25, § 285.413	Title 25, § 284.713
Title 25, § 285.414	Title 25, § 284.714
Title 25, § 285.421	Title 25, § 284.721
Title 25, § 285.422	Title 25, § 284.722
Title 25, § 285.423	Title 25, § 284.723
Title 25, § 285.424	Title 25, § 284.724
Title 25, § 285.431	Title 25, § 284.731
Title 25, § 285.432	Title 25, § 284.732
Title 25, § 285.433	Title 25, § 284.733
Title 25, § 285.434	Title 25, § 284.734

Subchapter A. GENERAL PROVISIONS

§ 284.1. Scope.

This section was added to solidify the consolidation of the infectious and chemotherapeutic waste regulations into one chapter.

§ 284.2. Permit by rule for infectious or chemotherapeutic waste processing facilities; qualifying facilities; general requirements.

This section is the former § 271.102 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is no other change from the proposed rulemaking except to add a clarification regarding the requirement of managing resulting ash. One commentator objected to the Department's distinction between "onsite" and "offsite" autoclave facilities under the § 271.102 (now § 284.2 in final-form rulemaking) permit-by-rule permitting provisions. The Board proposed changes to this section in order to clarify the limitations under which permit-by-rule facilities must operate, so as to maintain their permit-by-rule status. "Onsite" facilities have been afforded permit-by-rule permitting since 1992. It is the Board's position that the "onsite" handling and autoclaving of infectious waste eliminates the need for "offsite" transportation and processing of the waste. This "onsite" management also reduces the potential for adverse public health and environmental impacts. The Board declined to expand the scope of this section beyond "onsite" facilities.

§ 284.101. Authorization for general permits.

This section is the former § 271.711 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is no other change from the proposed rulemaking except to limit chemotherapeutic waste processing to stationary facilities and infectious waste processing to either mobile or stationary facilities.

§ 284.102. Nature of a general permit; substitution for individual applications and permits.

This section is the former § 271.712 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is no other change from the proposed rulemaking.

ISSUANCE OF A GENERAL PERMIT

§ 284.111. Application for general permit.

§ 284.112. Completeness review.

These sections are the former §§ 271.721 and 271.722 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from the proposed rulemaking or current regulations.

§ 284.113. Public notice and review period.

This section is the former § 271.723 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is one change from the proposed rulemaking: notifications during the comment period for those applications that would operate under an approved general permit on the effective date of the permit have been deleted. This process slowed down the original application review. The Department no longer accepts these applications. The applications that would operate under an issued general permit are registrations or determinations of applicability.

§ 284.114. Approval or denial of an application.

This section is the former § 271.724 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is no other change from current regulations.

§ 284.115. Department-initiated general permits.

This section is the former § 271.725 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is one change from the proposed rulemaking: notifications during the comment period for those applications that would operate under an approved general permit on the effective date of the permit have been deleted. This process slowed down the original application review. The Department no longer accepts these applications. The applications that would operate under an issued general permit are registrations or determinations of applicability.

CONTENTS OF GENERAL PERMITS AND WAIVERS

§ 284.121. Contents of general permits.

This section is the former § 271.731 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is no other change from the proposed rulemaking.

§ 284.122. Waiver or modification of certain requirements.

This section is the former § 271.732 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. One commentator asked that the original regulations be retained. The substance of this section has been retained. On final-form rulemaking, language has been added, however, that clarifies the Department's intention not to waive the permit application requirements in § 271.123 pertaining to the Commonwealth's right of entry and the landowner's consent to solid waste processing and beneficial use activities. The revisions to this section have been made to be consistent with the parallel sections for general permits for municipal waste and residual waste activities. Although the requirements of this section cannot be waived, the Department may modify the requirements. Circumstances relating to the imminent sale of property present an example of when the Department has modified the requirements in an effort to work with the existing and future landowners to meet the regulatory obligations of a landowner. In addition, the reference in subsection (b) to Subchapter D has been deleted to correct an error in the proposed rulemaking.

REGISTRATION AND DETERMINATION OF APPLICABILITY

§ 284.131. Authorization for persons or municipalities to be included in a general permit.

§ 284.132. Determination of applicability.

§ 284.133. Registration.

These sections are the former §§ 271.741—271.743 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from the proposed rulemaking.

Subchapter C. TRANSFER FACILITIES

§ 284.201. Scope.

This section was added to frame the application and operating requirements for the general permitting of transfer stations as a result of the consolidation of the infectious and chemotherapeutic waste regulations into one chapter.

§ 284.210. Application requirements.

This section was added to frame the application requirements for the general permitting of transfer stations as a result of the consolidation of the infectious and chemotherapeutic waste regulations into one chapter.

§ 284.220. Operating requirements.

This section was added to frame the operating requirements for the general permitting of transfer stations as a result of the consolidation of the infectious and chemotherapeutic waste regulations into one chapter.

Subchapter D. PROCESSING FACILITIES

§ 284.301. Scope.

This section was added to frame the application and operating requirements for the general permitting of processing facilities as a result of the consolidation of the infectious and chemotherapeutic waste regulations into one chapter.

§ 284.310. Application requirements.

This section was added to frame the application requirements for the general permitting of processing facilities as a result of the consolidation of the infectious and chemotherapeutic waste regulations into one chapter.

§ 284.311. Plan for monitoring.

This section is the former § 283.302 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is no other change from the proposed rulemaking except to change the reference resulting from the consolidation into this chapter.

§ 284.320. Operating requirements.

This section was added to frame the operating requirements for the general permitting of processing facilities as a result of the consolidation of the infectious and chemotherapeutic waste regulations into one chapter.

§ 284.321. Infectious waste monitoring requirements.

This section is the former § 283.402 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is no other change from the proposed rulemaking.

Subchapter E. STORAGE

§ 284.401. Scope.

This section was added to frame the operating requirements for storage for the general permitting of transfer

stations and processing facilities as a result of the consolidation of the infectious and chemotherapeutic waste regulations into one chapter.

§ 284.411. Basic storage requirements.

This section is the former § 285.142 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are two changes from the proposed rulemaking. One deletes the lower temperature from the temperature range regarding refrigeration or freezing. The deletion clarifies the requirement and is protective of public health and safety. Also, language was revised in subsection (a)(6) to prevent unauthorized access to waste stored in enclosures and containers. The intent never was to exclude either an enclosure or a container.

The Board added a new subsection (d) to allow the movement of different wastes in a facility, such as a hospital, on the same cart as long as the wastes are sorted and separately containerized.

§ 284.412. Sorting.

§ 284.413. Duration of storage of infectious waste for generators.

These sections are the former §§ 285.143 and 285.144 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no others change from the current regulations.

§ 284.414. Duration of storage of infectious waste for processors.

This section is the former § 285.145 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are two changes from the proposed rulemaking. One increases the duration of storage, and another deletes the lower temperature from the temperature range regarding refrigeration or freezing. The deletion clarifies the requirement and is protective for public health and safety. Feedback from transporters identified storage problems encountered on holidays and weekends.

§ 284.415. Storage containers.

This section is the former § 285.146 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are two changes from the proposed rulemaking. One includes additional colors for infectious waste packaging, and another changes a reference from the consolidation into this chapter. The additional colors mirror the Federal OSHA requirements.

§ 284.416. Marking of containers.

This section is the former § 285.147 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is a change from the proposed rulemaking. The Board deleted subsection (d) and replaced it with new language that clarifies proposed rulemaking text and incorporates the new OSHA standards for packaging.

§ 284.417. Reuse of containers.

This section is the former § 285.148 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. One commentator recommended that cardboard boxes should not be reused or recycled and must be managed as infectious or chemotherapeutic waste. Subsection (b) (formerly § 285.148(b)) specifically allows for the reuse of cardboard boxes which had contained infectious or chemotherapeutic waste pro-

vided the surface of the container was protected from direct contact with the waste. Reuse of these containers for infectious and chemotherapeutic waste continues to be appropriate, so the Board has retained this provision in the final-form rulemaking.

§ 284.418. Storage and containment of ash residue from infectious or chemotherapeutic waste incineration.

This section was added to identify these requirements. The language is identical to § 285.131 (relating to storage and containment of ash residue from municipal waste incineration, including from infectious or chemotherapeutic waste incinerations), which could not be moved to this chapter because those requirements are still applicable to ash residue from municipal waste incineration that is not from infectious or chemotherapeutic waste incineration.

§ 284.419. Storage and containment of processing residue from an infectious or chemotherapeutic waste processing facility.

This section is the former § 285.132 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is no other change from current regulations.

Subchapter F. COLLECTION AND TRANSPORTATION

GENERAL

§ 284.501. Scope.

This section was added to frame the operating requirements for collection and transportation for the general permitting of transfer stations and processing facilities as a result of the consolidation of the infectious and chemotherapeutic waste regulations into one chapter.

TYPES OF WASTE

§ 284.511. Transportation of ash residue from infectious or chemotherapeutic waste incineration.

This section was added to identify these requirements. The language is identical to § 285.221 (relating to transportation of ash residue from municipal waste incineration and from infectious or chemotherapeutic waste incineration), which could not be moved to this chapter because those requirements are still applicable to ash residue from municipal waste incineration that is not from infectious or chemotherapeutic waste incineration.

§ 284.512. Transportation of infectious and chemotherapeutic waste; general provisions.

This section is the former § 285.222 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. The Board amended this section to delete the lower temperature from the temperature range regarding refrigeration or freezing. The deletion clarifies the requirement and is protective of public health and safety.

§ 284.513. Transportation of infectious and chemotherapeutic waste; additional provisions.

This section is the former § 285.223 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are two changes from the proposed rulemaking. One includes additional colors for infectious waste packaging, and another changes a reference from the consolidation into this chapter. The additional colors mirror the Federal OSHA requirements.

§ 284.514. Transportation of processing residue from an infectious or chemotherapeutic waste facility.

This section is the former § 285.224 and has been moved to this chapter to consolidate infectious and che-

motherapeutic waste into one chapter. There is no other change from current regulations.

Subchapter G. TRANSPORTER LICENSING FOR INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

GENERAL PROVISIONS

§ 284.601. Scope.

§ 284.602. License requirement.

§ 284.603. Identification number.

These sections are the former §§ 285.301—285.303 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from current regulations.

LICENSE APPLICATION REQUIREMENTS

§ 284.611. General application requirements.

§ 284.612. Vehicular liability insurance.

These sections are the former §§ 285.311—285.312 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from the proposed rulemaking or current regulations.

LICENSE APPLICATION REVIEW

§ 284.621. Criteria for license issuance or denial.

§ 284.622. Term of license.

§ 284.623. Conditions of licenses.

§ 284.624. License renewal.

§ 284.625. Public notice.

These sections are the former §§ 285.321—285.325 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from current regulations.

OPERATIONAL REQUIREMENTS

§ 284.631. Basic limitations.

This section is the former § 285.331 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is one change from the proposed rulemaking in the reference resulting from the consolidation into this chapter.

§ 284.632. Infectious or chemotherapeutic waste discharges or spills.

§ 284.633. Safety.

§ 284.634. Annual report.

These sections are the former §§ 285.332—285.334 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from current regulations.

BOND

§ 284.641. Bond requirement.

§ 284.642. Release of bond.

§ 284.643. Bond forfeiture.

§ 284.644. Replacement of existing bond.

§ 284.645. Preservation of remedies.

These sections are the former §§ 285.341—285.345 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from current regulations.

Subchapter H. MANIFESTING FOR INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

GENERAL

§ 284.701. Scope.

§ 284.702. Transfer facilities.

§ 284.703. Recordkeeping.

These sections are the former §§ 285.401—285.403 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from current regulations.

GENERATOR RESPONSIBILITIES

§ 284.711. Use of manifest.

§ 284.712. Preparation of manifest.

§ 284.713. Generator's distribution of copies.

These sections are the former §§ 285.411—285.413 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from the proposed rulemaking or current regulations.

§ 284.714. Exception reporting.

This section is the former § 285.414 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. One change on final-form rulemaking extends the amount of time a generator has to report a manifest discrepancy.

TRANSPORTER RESPONSIBILITIES

§ 284.721. Basic requirements.

§ 284.722. Preparation and use of manifest.

§ 284.723. Waste delivery.

§ 284.724. Transportation limitations.

These sections are the former §§ 285.421—285.424 and have been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from the proposed rulemaking or current regulations.

FACILITY RESPONSIBILITIES

§ 284.731. Scope.

This section is the former § 285.431 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There are no other changes from the proposed rulemaking or current regulations.

§ 284.732. Use of manifest.

This section is the former § 285.432 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. Minor clarifications have been made to subsection (a) including the update of a cross-reference.

§ 284.733. Distribution of copies.

This section is the former § 285.433 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. One change from the proposed rulemaking increases the number of days from 7 to 14 to send a manifest copy to the generator of the waste. Feedback from transporters indicates that an increase would account for long hauls, holidays, weekends and intransit storage. This is an administrative requirement.

§ 284.734. Significant discrepancies.

This section is the former § 285.434 and has been moved to this chapter to consolidate infectious and chemotherapeutic waste into one chapter. There is no other change from current regulations.

CHAPTER 285. STORAGE, COLLECTION AND TRANSPORTATION OF MUNICIPAL WASTE

Subchapter A. STORAGE OF MUNICIPAL WASTE SCOPE

§ 285.101. Scope.

A reference revision was made to this section that was previously overlooked.

GENERAL

§ 285.112. Design and operation.

The Board added subsection (c) to indicate that water quality monitoring requirements and a groundwater assessment plan may be required and are the same as in Chapter 273. Cross-referencing those sections from Chapter 273 did this. The Board also required groundwater monitoring for sewage sludge impoundments constructed after January 25, 1997 and for leachate storage impoundments.

§ 285.117. Emergency storage.

A commentator questioned if 5 days is a reasonable time period for a facility to submit a permit modification. This requirement has been successfully implemented in the residual waste program since 1992. The requisite permit modification application includes a narrative describing the emergency, current or future activities and may include some plan drawings. The narrative and plans can reasonably be submitted in 5 days.

ADDITIONAL REQUIREMENTS FOR CERTAIN TYPES OF WASTE

§ 285.132. (Reserved).

This section has been relocated to § 284.419.

ADDITIONAL REQUIREMENTS FOR INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

§§ 285.142—285.148. (Reserved).

These sections have been relocated to §§ 284.411—284.417.

Subchapter B. COLLECTION AND TRANSPORTATION OF MUNICIPAL WASTE SCOPE

§ 285.201. Scope.

A correction was made to references as a result of the consolidation into Chapter 284.

GENERAL PROVISIONS

§ 285.211. General requirements.

A commentator requested that this section be amended to provide that the tarps used are water resistant and of a fine mesh type thereby preventing many of the problems that are associated with the bulky heavy "water-proof" tarps. The proposed regulations already required that tarps be water resistant, which is retained in the final-form rulemaking. Also, as long as the performance standards are met, the mesh type can vary.

The Board has added subsection (c) to prohibit the combining of waste with source separated recyclable materials in a collection or transportation vehicle. Act 101

established that waste reduction and recycling are preferable to the processing or disposal of municipal waste. Act 101 provided specific waste reduction and recycling goals, and targets for the attainment of these goals, to encourage the development of waste reduction and recycling as a means of managing municipal waste. By removing recyclables from the municipal waste stream, the Commonwealth benefits through the conservation and recovery of valuable resources and energy, and Commonwealth industries benefit from a reliable supply of reusable feedstock materials. The Department is receiving complaints of waste haulers combining source separated recyclable materials with the trash picked up on the same route. Mixture of recyclable materials and waste materials within waste collection vehicles decreases the efficiency of processing recyclable materials into commodities and feedstocks, increases the amount of residue requiring processing or disposal due to contamination from contact with waste materials, and reduces the amount of reusable material that can be returned to the economic mainstream in the form of raw materials or products. Loss of these commodities impairs the Commonwealth's scrap and recycling industries that have historically purchased, processed and marketed recoverable materials, and it erodes the orderly, incremental and long-term commitment of the Commonwealth to an effective and coherent solid waste management strategy.

§ 285.214. Transportation equipment cleaning area and securing loads in vehicles.

A commentator requested deletion of the sentence "The load shall be no higher than the solid sides of the vehicle" in subsection (b)(1). The commentator asserts that allowance needs to be made for shifting of loads in transit and for the possible unevenness of loads of construction and demolition waste. The Board does not agree. This requirement is a statutory requirement found in section 4903(c.1) of the Vehicle Code. It protects against the potential for waste to fall from a vehicle if waste is higher than the solid side of the vehicle and helps to further prevent litter and other nuisances from occurring.

§ 285.219. Transporting foodstuffs and feedstuffs in vehicles used to transport waste.

A commentator proposed language for a vehicle used to transport municipal, residual or hazardous waste, or any chemical or liquid, in bulk, which is not a food product or produce, to be thoroughly cleansed and sanitized and thereafter be used to haul a food product or produce intended for human or livestock consumption. A number of requirements for cleaning and sanitizing are also included in this comment. The Board did not accept this language. The statutory prohibition against backhauling, upon which this regulation is based, is absolute and does not make an exception for vehicles that have been cleaned. See section 4909 of the Vehicle Code.

TYPES OF WASTE

§§ 285.222—285.224. (Reserved).

These sections have been relocated to §§ 284.512—284.514.

Subchapter C. TRANSPORTER LICENSING FOR INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

GENERAL PROVISIONS

§§ 285.301—285.303. (Reserved).

These sections have been relocated to §§ 284.601—284.603.

LICENSE APPLICATION REQUIREMENTS

§§ 285.311—285.312. (Reserved).

These sections have been relocated to §§ 284.611—284.612.

LICENSE APPLICATION REVIEW

§§ 285.321—285.325. (Reserved).

These sections have been relocated to §§ 284.621—284.625.

OPERATIONAL REQUIREMENTS

§§ 285.331—285.334. (Reserved).

These sections have been relocated to §§ 284.631—284.634.

BOND

§§ 285.341—285.345. (Reserved).

These sections have been deleted and moved to §§ 284.641—284.645.

Subchapter D. MANIFESTING FOR INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

§§ 285.401—285.403. (Reserved).

These sections have been relocated §§ 284.701—284.703.

GENERATOR RESPONSIBILITIES

§§ 285.411—285.414. (Reserved).

These sections have been relocated to §§ 284.711—284.714.

TRANSPORTER RESPONSIBILITIES

§§ 285.421—285.424. (Reserved).

These sections have been relocated to §§ 284.721—284.724.

FACILITY RESPONSIBILITIES

§§ 285.431—285.434. (Reserved).

These sections have been relocated to §§ 284.731—284.734.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulation.

Benefits

The final amendments to the municipal waste regulations clarify existing regulations; eliminate many requirements that are more stringent than standards imposed by Federal law; eliminate requirements which are no longer necessary or are redundant; encourage performance-based requirements; encourage green technologies; and support a pollution prevention approach.

Numerous changes are made to encourage flexibility and innovation by facility operators. The final amendments to the technical standards for municipal waste facilities, for example daily cover requirements, focus on providing performance standards instead of design standards wherever appropriate. Where a design standard is stated and an equivalent method or technology is available if demonstrated by the applicant/operator to be adequate, the equivalency approval process has been simplified. Similarly, the proposed amendments limit the types of permit modifications which must go through a major modification process (including public notice and comment).

The final regulations may result in lower costs for municipal waste disposal because the regulations incorporate Act 2 remediation standards for facilities that ceased accepting waste prior to the effective date of the Federal Subtitle D criteria (October 9, 1993) and are consistent with the Subtitle D standards for facilities that ceased accepting waste after October 9, 1993.

To promote green technologies, the final-form regulations allow for the demonstration of new technology at existing facilities to be done through a permit modification process.

The final-form regulations clarify and simplify the requirements for revising a county municipal waste management plan while focusing on the county's requirement to assure adequate disposal and processing capacity for waste generated within the county. Counties should benefit from these revisions when they prepare their plan revisions. Both counties and municipalities will realize financial benefits from the streamlined planning and grant procedures.

The final-form regulations facilitate easier access to moneys in the site-specific postclosure trust funds established under section 1108 of Act 101 for conducting postclosure activities at municipal waste landfills that operated prior to the 1988 municipal waste regulations and closed with little or no bond in place. This will provide greater protection of the environment and of persons living near these facilities. The final-form regulations also protect the corpus of small site-specific postclosure trust funds from being depleted by administrative costs. This will help ensure availability of the corpus if and when the money is needed for emergency actions or remedial measures during postclosure, as envisioned under Act 101. Amendments were also made to the regulations to authorize host counties to access the trust funds in accordance with the Environmental Stewardship and Watershed Protection Act.

The citizens of this Commonwealth will benefit as a result of the more detailed environmental assessment process, which requires actual mitigation of existing and potential harms to the public and the environment from the facility. Citizens will also benefit from better protection from the improper disposal of radioactive materials.

Compliance Costs

This comprehensive rulemaking may result in overall increased costs to the regulated community, spread over several hundred facilities, of over \$1 million each of the first 2 years, after which the savings should exceed the costs. Increased costs to industry will largely be reflected in the requirements of establishing systems for monitoring for and responding to radioactive materials unlawfully arriving at a waste facility. Increased costs also include the cost of installing a composite component in a landfill liner system. Industry will also experience minor cost increases as a result of increases in permit application fees and annual report fees. Increased costs to local governments, small by comparison, will be reflected in the costs of placing signs on equipment purchased with Recycling Fund money.

Savings are projected to be significant. Savings to municipal waste facility operators will be enjoyed largely as a result of the reduced costs associated with preparation of permit modifications and as a result of the increased use of performance-based standards such as those for landfill daily cover materials. Local governments will particularly enjoy savings as a result of the opportunity

to avoid having an independent audit performed in many cases in which a grant is sought under Chapter 272.

Compliance Assistance Plan

The Department will assist the regulated community by developing fact sheets where they would be helpful. In addition, the Department will continue to work with the Pennsylvania Waste Industries Association, the Solid Waste Association of North America (Pennsylvania Chapter), the Public Recycling Officials of Pennsylvania, the Pennsylvania Resources Council and other industry and government groups. The Department's field staff will provide compliance assistance during routine facility permitting and inspections, and in assisting counties with the county planning and recycling requirements.

Paperwork Requirements

The proposed regulations will not increase paperwork requirements on the part of the regulated community.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, or the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. These final-form regulations have incorporated the following pollution prevention provisions and incentives:

The final-form regulations will encourage pollution prevention by authorizing grants under the Small Business and Household Pollution Prevention Program Act for educational programs on pollution prevention and household hazardous waste and for other technical assistance to small business for pollution prevention. The regulations retain the requirement for generators of residual waste disposed in municipal waste landfills to have a source reduction strategy and requires landfills to provide a plan for recycling and salvaging wastes.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 11, 1998, the Department submitted a copy of the notice of proposed rulemaking, published at 28 Pa. B. 4319, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), on October 12, 2000, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 19, 2000, and approved the final-form regulations.

J. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa.B. §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 28 Pa.B. 4319.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 271—273 and 277—285, are amended by amending §§ 271.1—271.4, 271.101, 271.103, 271.113, 271.122—271.128, 271.141, 271.142, 271.144, 271.201—271.203, 271.211, 271.212, 271.221—271.223, 271.231, 271.301, 271.312, 271.321, 271.332, 271.341—271.343, 271.413, 271.421, 271.501, 271.502, 271.504, 271.505, 271.611—271.613, 271.801, 271.811, 271.821, 271.832, 271.915, 272.1, 272.101—272.106, 272.211, 272.221, 272.223—272.228, 272.233, 272.244, 272.245, 272.251, 272.252, 272.261, 272.311, 272.313, 272.314, 272.316, 272.321—272.323, 272.332, 272.333, 272.341, 272.342, 272.342, 272.353, 272.362, 272.411, 272.426, 272.513, 273.111—273.117, 273.120, 273.132—273.134, 273.136, 273.139, 273.140, 273.141, 273.152, 273.161, 273.163, 273.192, 273.196, 273.197, 273.201—273.203, 273.211—273.218, 273.221, 273.232—273.234, 273.241, 273.245, 273.251—273.258, 273.272, 273.274—273.277, 273.281—273.284, 273.286, 273.287, 273.291—273.293, 273.301—273.303, 273.311, 273.313, 273.315, 273.316, 273.322, 273.501, 273.511, 273.513, 277.111—277.117, 277.120, 277.131—277.134, 277.136, 277.138, 277.141, 277.152, 277.161—277.164, 277.192, 277.201—277.203, 277.211—277.218, 277.232, 277.233, 277.241, 277.245, 277.251—277.257, 277.259, 277.272, 277.274—277.277, 277.281—277.284, 277.286, 277.287, 277.291, 277.292, 277.301—277.303, 277.311, 277.312, 277.322, 279.1, 279.101—279.106, 279.109, 279.121, 279.201, 279.202, 279.211—279.219, 279.221, 279.231—279.233, 279.242, 279.243, 279.251, 279.252, 279.262, 281.101, 281.111, 281.112, 281.121, 281.132, 281.134, 281.201, 281.202, 281.211, 281.212, 281.214, 281.215, 281.217, 281.218, 281.220, 281.231, 281.234, 281.251, 281.253, 281.254, 281.263, 281.271, 281.272, 281.282, 283.102, 283.103, 283.107, 283.112, 283.121, 283.201, 283.202, 283.211, 283.212—283.219, 283.231—283.233, 283.253, 283.261, 283.262, 283.264, 283.272, 283.281, 285.101, 285.111, 285.112, 285.115, 285.121, 285.124, 285.201, 285.211, 285.212, 285.214, 285.216, 285.217 and 285.219; by adding §§ 271.5, 271.114, 272.364, 273.121, 273.140a, 273.223, 277.121, 277.122, 277.139, 277.140, 277.221, 277.222, 279.110, 279.111, 279.222, 279.223, 279.234, 281.119, 281.123, 281.221, 281.222, 281.255, 283.113, 283.114,

283.220, 283.223, 283.234, 284.1, 284.2, 284.101, 284.102, 284.111—284.115, 284.121, 284.122, 284.131—284.133, 284.201, 284.210, 284.220, 284.301, 284.310, 284.311, 284.320, 284.321, 284.401, 284.411—284.419, 284.501, 284.511—284.514, 284.601—284.603, 284.611, 284.612, 284.621—284.625, 284.631—284.634, 284.641—284.645, 284.701—284.703, 284.711—284.714, 284.721—284.724, 284.731—284.734, 285.116 and 285.117; and by deleting §§ 271.102, 271.111, 271.112, 271.711, 271.712, 271.721—271.725, 271.731, 271.732, 271.741—271.744, 273.231, 277.110, 277.231, 283.302, 283.402, 285.132, 285.142—285.148, 285.222—285.224, 285.301—285.303, 285.311, 285.312, 285.321—285.325, 285.331—285.334, 285.341—285.345, 285.401—285.403, 285.411—285.414, 285.421—285.424 and 285.431—285.434 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 5807 (November 4, 2000).)

Fiscal Note: Fiscal Note 7-340 remains valid for the final adoption of the subject regulations.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

**Subpart D. ENVIRONMENTAL HEALTH AND
SAFETY**

ARTICLE VIII. MUNICIPAL WASTE

**CHAPTER 271. MUNICIPAL WASTE
MANAGEMENT—GENERAL PROVISIONS**

Subchapter A. GENERAL

§ 271.1. Definitions.

The following words and terms, when used in this article, have the following meanings unless the context clearly indicates otherwise:

* * * * *

Abatement standards—Background, MCLs and risk-based standards as those terms are defined under this article.

* * * * *

Airport—"Public airport," as defined in 67 Pa. Code § 471.2 (relating to definitions). The term does not include heliports.

* * * * *

Alternative groundwater protection standard—A risk-based remediation standard for substances that have no primary MCLs under the Federal and State Safe Drinking Water Acts (42 U.S.C.A. §§ 300f–300j-18; and 35 P.S. §§ 721.1–721.17). For carcinogens, the standard represents a concentration associated with an excess lifetime cancer risk level between 1×10^{-4} and 1×10^{-6} , including the cumulative risk of all contaminants. For systemic toxicants, the standard represents a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. When several systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index may not exceed one.

* * * * *

Aquifer—A geologic formation, group of formations or part of a formation capable of yielding sufficient groundwater for monitoring purposes.

Association—A corporation, partnership, limited liability company, business trust or two or more persons associated in a common enterprise or undertaking.

* * * * *

Autoclave—A pressure vessel in which infectious waste is disinfected using high temperature steam, directly or indirectly, to maintain specified temperatures for retention times consistent with the waste being processed.

Autofluff—The residue from the shredding of automobiles, after all fluids have been removed.

Background standard—A numerical value as determined under section 302 of the Land Recycling and Environmental Remediation Standards Act (35 P.S. § 6026.302) and § 250.202 (relating to establishing background concentrations).

* * * * *

Byproduct material—The Federal definition for “byproduct material” in 10 CFR 20.1003 (relating to definitions) is incorporated by reference.

* * * * *

Clean fill—Uncontaminated, nonwater-soluble, nondecomposable inert solid material used to level an area or bring the area to grade. The term does not include material placed into or on waters of this Commonwealth.

* * * * *

Closure certification—A written document attested to by a corporate official that states that a landfill has permanently ceased accepting waste and access has been limited to activities necessary for postclosure care, maintenance and monitoring.

* * * * *

Construction/demolition waste—Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term does not include the following if they are separate from other waste and are used as clean fill:

(i) Uncontaminated soil, rock, stone, gravel, brick and block, concrete and used asphalt.

(ii) Waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

* * * * *

Dredged material—Material dredged or excavated from waters for the direct or indirect purpose of establishing or increasing water depth, or increasing the surface or cross-sectional area of a waterway and which includes sediment, soil, mud, shells, gravel or other aggregate. The material does not include waste removed or dredged from an impoundment that has received solid waste.

* * * * *

Environmental Stewardship and Watershed Protection Act—27 Pa.C.S. §§ 6101–6113.

* * * * *

FAA—The Federal Aviation Administration of the United States Department of Transportation.

Facility—Land, structures and other appurtenances or improvements where municipal waste disposal, processing or beneficial use is permitted or takes place.

* * * * *

General composting facility—A composting facility other than an individual backyard composting facility or yard waste composting facility operating under § 271.103(h) (relating to permit-by-rule for municipal waste processing facilities other than for infectious or chemotherapeutic waste; qualifying facilities; general requirements).

* * * * *

Groundwater degradation—A measurable increase in the concentration of one or more contaminants in groundwater above background concentrations for those contaminants.

* * * * *

Highly virulent diseases—Diseases derived from Class IV etiologic agents, as defined by the Centers for Disease Control, United States Department of Health and Human Services. Information about Class IV etiologic agents may be obtained from CDC-NIH Biosafety, Microbiological and Biomedical Laboratories Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.

Home self-care—The provision of medical care in the home setting (for example, private residents) through either self-administration practices or by a family member or other person.

* * * * *

Infectious waste—

(i) *General*. Municipal and residual waste which is generated in the diagnosis, treatment, immunization or autopsy of human beings or animals, in research pertaining thereto, in the preparation of human or animal remains for interment or cremation, or in the production or testing of biologicals, and which falls under one or more of the following categories:

* * * * *

(C) *Human blood and body fluid waste*.

* * * * *

(VII) Items saturated or dripping with body fluids or caked with dried body fluids from persons during surgery, autopsy, other medical procedures or laboratory procedures.

* * * * *

(F) *Used sharps*. Sharps that have been in contact with infectious agents or that have been used in animal or human patient care or treatment, at medical, research or industrial laboratories.

* * * * *

(iii) *Exceptions.* The term does not include the following:

(A) Wastes generated as a result of home self-care.

* * * * *

(G) Reusable or recyclable containers or other nondisposable materials, if they are cleaned and disinfected, or if there has been no direct contact between the surface of the container and materials identified in subparagraph (i). Laundry or medical equipment shall be cleaned and disinfected in accordance with the United States Occupational Safety and Health Administration Requirements in 29 CFR 1910.1030 (relating to bloodborne pathogens).

* * * * *

MCL—Maximum contaminant level.

* * * * *

Mobile infectious waste processing facility—An infectious waste processing unit which is moved from one waste generation site to another for the purpose of onsite processing of a generator's infectious waste. The term refers to any processing activity designed to disinfect infectious waste in accordance with § 284.321 (relating to infectious waste monitoring requirements) to render the waste noninfectious. The term does not include any permanently placed waste processing units.

* * * * *

NARM—*Naturally occurring or accelerator-produced radioactive material*—The term does not include byproduct, source or special nuclear material.

NORM—*Naturally occurring radioactive material*—A nuclide which is radioactive in its natural physical state—that is, not manmade—but does not include source or special nuclear material.

* * * * *

Radioactive material—A substance which spontaneously emits alpha or beta particles or photons (gamma radiation) in the process of decay or transformation of the atom's nucleus.

* * * * *

Remediation standards—Background, MCLs, site-specific, Statewide health and alternative groundwater protection standards as those terms are defined under this article.

* * * * *

Risk-based standard—A risk-based abatement standard for substances that have no MCLs under the Federal and State Safe Drinking Water Acts.

(i) For carcinogens the standard represents a concentration associated with an excess lifetime cancer risk level between 1×10^{-4} and 1×10^{-6} , including the cumulative risk of all contaminants and represents a concentration associated with an excess cancer risk level of 1×10^{-5} at the property boundary of a municipal waste facility.

(ii) For systemic toxicants, the standard represents a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime.

(iii) When several systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index may not exceed one.

* * * * *

Secondary contaminant—A substance for which a secondary MCL exists, and no lifetime health advisory level exists.

* * * * *

Sharps—Broken glass that has been in contact with pathogenic organisms, hypodermic needles and syringes to which a needle can be attached, with or without the attached needle, suture needles, disposable razors, pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, culture dishes, suture needles, slides, cover slips and other broken or unbroken glass or plasticware.

* * * * *

Site-specific standard—A numerical value as determined under section 304 of the Land Recycling and Environmental Remediation Standards Act (35 P. S. § 6026.304) and Chapter 250, Subchapter F (relating to exposure and risk determinations).

* * * * *

Small Business and Household Pollution Prevention Program Act—35 P. S. §§ 6029.201—6029.209.

* * * * *

Source material—The Federal Definition for “source material” in 10 CFR 20.1003 is incorporated by reference.

* * * * *

Special handling waste—Solid waste that requires the application of special storage, collection, transportation, processing or disposal techniques due to the quantity of material generated or its unique physical, chemical or biological characteristics. The term includes dredged material, sewage sludge, infectious waste, chemotherapeutic waste, ash residue from a solid waste incineration facility, friable asbestos containing waste, PCB containing waste and waste oil that is not hazardous waste.

Special nuclear material—The Federal definition for “special nuclear material” in 10 CFR 20.1003 is incorporated by reference. The term “Commission” refers to the Nuclear Regulatory Commission. The term “act” refers to the Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2297h-13). The term “Department” shall be substituted for the term “Commission” when the Department assumes Agreement State Status from the Nuclear Regulatory Commission.

* * * * *

Statewide health standard—A numerical value as determined under section 303 of the Land Recycling and Environmental Remediation Standards Act (35 P. S. § 6026.303) and § 250.304, except for subsection (d), §§ 250.305 and 250.308 (relating to MSCs for groundwater; MSCs for soil; and soil to groundwater pathway numeric values).

* * * * *

TENORM—*Technologically Enhanced Naturally Occurring Radioactive Materials*—A naturally occurring radioactive material not subject to regulation under the laws of the Commonwealth or the Atomic Energy Act of 1954, whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities.

* * * * *

Thermal processing—A method, technique or process, excluding incineration and autoclaving, designed to disinfect infectious waste by means of exposure to high thermal temperatures through methods such as ionizing radiation or electric or plasma arc technologies.

* * * * *

Transuranic radioactive material—Material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium and curium.

* * * * *

Unrecognizable infectious waste—All components of the waste have been processed to produce indistinguishable and unusable pieces smaller than 3/4 of an inch, except that all sharps must be smaller than 1/2 inch. The term does not mean compaction or encapsulation except through:

- (i) Processes such as thermal treatment or melting, during which disinfection and destruction occur.
- (ii) Processes such as shredding, grinding, tearing or breaking, during or after disinfection occurs.
- (iii) Processes that melt plastics and fully encapsulate metallic or other sharps and seals waste completely in a container that will not be penetrated by untreated sharps.

* * * * *

Waste—A material whose original purpose has been completed and which is directed to a disposal, processing or beneficial use facility or is otherwise disposed of, processed or beneficially used. The term does not include source separated recyclable materials, material approved by the Department for beneficial use under a beneficial use order issued by the Department prior to May 27, 1997, or material which is beneficially used in accordance with a general permit issued under Subchapter I (relating to beneficial use) or Subchapter J (relating to beneficial use of sewage sludge by land application) if a term or condition of the general permit excludes the material from being regulated as a waste.

* * * * *

Wetlands—Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

* * * * *

§ 271.2. Scope.

(a) This chapter specifies certain general procedures and rules for persons who operate municipal waste management facilities. This chapter, together with Chapters 273, 275, 277, 279, 281, 283, 284 and 285, specifies the Department's requirements for municipal waste processing, disposal, transportation, collection and storage.

(b) Management of the following types of residual waste is subject to this article instead of Article IX (relating to residual waste management), and shall be regulated as if the waste is municipal waste, regardless of whether the waste is a municipal waste or residual waste.

- (1) Construction/demolition waste, except construction/demolition waste with greater than 4 ppm PCBs.
- (2) Infectious and chemotherapeutic waste.

(3) Leaf waste and grass clippings.

(4) Waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

(c) Management of the following types of waste is subject to Article IX instead of this article, and shall be regulated as if the waste is residual waste, regardless of whether the waste is municipal waste or residual waste:

- (1) Water supply treatment plant sludges.
- (2) Waste oil that is not hazardous waste.
- (3) Waste tires and auto fluff.
- (4) Contaminated soil.
- (5) Used asphalt.
- (6) Dredged material.

(d) The disposal, processing, storage and transportation at a municipal waste management facility of the following types of special handling waste is subject to the applicable additional requirements for the disposal, processing, storage and transportation of these wastes in Article IX, and shall be regulated as if the waste is residual waste, regardless of whether the waste is municipal waste or residual waste:

- (1) Friable asbestos containing waste.
- (2) PCB containing waste.

§ 271.3. Environmental protection.

(a) The Department may, in writing, request information from a permit applicant or operator not specifically identified in this article that the Department deems necessary to implement the purpose and provisions of the act, the environmental protection acts and the regulations promulgated thereunder, including a provision of this article.

(b) The Department may, in issuing a permit under this article, impose terms and conditions the Department deems necessary to implement the provisions and purposes of the act, the environmental protection acts and the regulations promulgated thereunder, including this article.

§ 271.4. Computerized data submission.

(a) Data required under this article may be submitted electronically or on magnetic or optic storage media in a format specified by the Department, if authorized by the Department.

(b) Data required under this article shall be submitted electronically or on magnetic or optic storage media in a format specified by the Department, if required by the Department.

(c) The Department may require a different scale than required in the application and operation requirements in this article to facilitate the use of data on maps, reports and plans submitted electronically or on magnetic or optic storage media.

§ 271.5. Public records and confidential information.

(a) Except as provided in subsection (b), records, reports or other information submitted to the Department under this article shall be available to the public for inspection or copying during regular business hours.

(b) The Department may, upon request, designate records, reports or other information as confidential when the person or municipality providing the information demonstrates the following:

(1) The information contains trade secrets, processes, operations, style of work or apparatus of a person or municipality or is otherwise confidential business information.

(2) The information is not emission or discharge data or other information that relates to public health, safety, welfare or the environment.

(c) When submitting information under this article, a person or municipality shall designate the information which the person or municipality believes is confidential or shall submit that information separately from other information being submitted.

(d) Information which the Department determines to be confidential under this section will not be made available to the public.

(e) This section does not prevent the disclosure of information to the Federal Government or other State agencies as may be necessary for purposes of administration of Federal or State Law.

(f) This section does not prevent the disclosure of information submitted to the Department as part of a general permit application under § 271.821 (relating to the application for general permit) which meets one of the following:

(1) The Department is required to make the information available to the public as part of the general permit.

(2) The Department determines that it is necessary to disclose the information during the comment period for the general permit to obtain informed public comment on the general permit.

Subchapter B. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

REQUIREMENT

§ 271.101. Permit requirement.

(a) Except as provided in subsection (b), a person or municipality may not own or operate a municipal waste disposal or processing facility unless the person or municipality has first applied for and obtained a permit for the facility from the Department under the requirements of this article.

(b) A person or municipality is not required to obtain a permit:

(1) For the use or application of agricultural waste in normal farming operations, unless the proposed use or application of the waste may cause pollution to air, water or other natural resources of this Commonwealth.

(2) For a source separation and collection program for recycling municipal waste, or for dropoff points, or collection or processing centers for source separated recyclable materials.

(3) For the use as clean fill of the following materials if they are separate from other waste:

(i) Uncontaminated soil, rock, stone, gravel, unused brick and block and concrete.

(ii) Waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

(4) For temporary storage, which facilitates the transportation or transfer of infectious or chemotherapeutic waste, that does not exceed 24 hours. The stored waste shall remain in its original packaging, as received for storage.

(5) For the use of waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material if the waste is not hazardous. A person managing waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material, shall implement best management practices. The Department will prepare a manual for the management of waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material which identifies best management practices and may approve additional best management practices on a case-by-case basis. If a person fails to implement best management practices for managing waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material, the Department may require compliance with the disposal, composting, processing and storage operating requirements of Chapters 271, 281, 283 and 285.

(c) Subsection (b) does not relieve a person or municipality of the requirements of an applicable environmental protection act or an applicable regulation promulgated under it. Notwithstanding subsection (b), the Department may require a person or municipality to apply for, and obtain, an individual or general solid waste permit, or take other appropriate action, when the person or municipality is conducting a solid waste activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

§ 271.102. (Reserved).

§ 271.103. Permit-by-rule for municipal waste processing facilities other than for infectious or chemotherapeutic waste; qualifying facilities; general requirements.

* * * * *

(d) *Captive processing facility.* A facility that processes municipal waste that is generated solely by the operator, onsite or offsite, shall be deemed to have a municipal waste processing permit under this article if, in addition to subsections (a)—(c), the following conditions are met:

* * * * *

(5) For special handling waste, the operator submits a written notice to the Department that includes the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility.

* * * * *

(f) *Incinerator.* A municipal waste incinerator located at the generation site shall be deemed to have a municipal waste permit under this article if, in addition to the requirements of subsections (a)—(c), the operator submits a written notice to the Department that includes the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility and the facility meets one of the following:

* * * * *

(h) *Yard waste composting facility.* A person or municipality that operates a yard waste composting facility that is less than 5 acres, other than an individual backyard composting facility, shall be deemed to have a municipal waste processing permit-by-rule if the person or municipality meets the requirements of subsections (a)—(c), the facility is operated in accordance with the Department's guidelines on yard waste composting and the operator submits a written notice to the Department that includes

the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility.

EXISTING FACILITIES

§ 271.111. (Reserved).

§ 271.112. (Reserved).

§ 271.113. Closure plan.

(a) The Department may require a person or municipality that closed a municipal waste landfill, construction/demolition waste landfill or municipal waste disposal impoundment after September 7, 1980, and before April 9, 1988, to submit a closure plan to the Department under this section. The person or municipality shall submit the closure plan to the Department within 6 months after receiving written notice.

(b) A closure plan for municipal waste landfills or municipal waste disposal impoundments submitted under this section shall show how the operator plans to close in a manner that will protect public health, safety and the environment. At a minimum, the closure plan shall be consistent with the following:

(1) Final cover and grading requirements in § 273.234 (relating to final cover and grading).

(2) Sedimentation and erosion control requirements in § 273.242 (relating to soil erosion and sedimentation control).

(3) Revegetation requirements in §§ 273.235 and 273.236 (relating to revegetation; and standards for successful revegetation).

(4) Water quality monitoring requirements in §§ 273.281—273.288 (relating to water quality monitoring).

(5) Leachate management requirements in §§ 273.271—273.277 (relating to leachate treatment).

(6) Gas venting and monitoring requirements in § 273.292 (relating to gas control and monitoring).

(7) Bonding and insurance requirements in Subchapter D (relating to financial assurances requirements).

(c) A closure plan for construction/demolition waste landfills submitted under this section shall show how the operator plans to close in a manner that will protect public health, safety and the environment. At a minimum, the closure plan shall be consistent with the following:

(1) Final cover and grading requirements in § 277.233 (relating to final cover and grading).

(2) Sedimentation and erosion control requirements in § 277.242 (relating to soil erosion and sedimentation control).

(3) Revegetation requirements in § 277.235 (relating to standards for successful revegetation).

(4) Water quality monitoring requirements in §§ 277.281—277.288 (relating to water quality monitoring).

(5) Leachate management requirements in §§ 277.271—277.277 (relating to leachate treatment).

(6) Bonding and insurance requirements in Subchapter D.

(d) The Department may waive or modify the applicable regulations concerning subsection (b)(1)—(6) or subsection (c)(1)—(5) if a person or municipality can demon-

strate that an existing system or design performs at a level that is equivalent to the applicable regulations.

(e) The Department may approve, approve with modifications or disapprove a closure plan submitted under this subchapter.

(f) A person or municipality may not implement a closure plan submitted under this subchapter until the Department has approved the closure plan.

(g) Groundwater degradation at a municipal waste landfill which ceased receiving waste between September 7, 1980, and October 9, 1993, and groundwater degradation at a construction/demolition waste landfill or municipal waste disposal impoundment which ceased receiving waste after September 7, 1980 and before April 9, 1988, shall be remediated in accordance with one of the following:

(1) An approved closure plan, permit or any prior administrative consent order, consent adjudication, judicially approved consent order or other settlement agreement entered into with the Department.

(2) The remediation standards for other facilities in § 271.342(b)(4) (relating to final closure certification).

(h) A person or municipality may request final closure certification under § 271.342 (relating to final closure certification) upon completion of a closure plan approved under this section.

§ 271.114. Transition period.

A person or municipality possessing a permit for a municipal waste disposal or processing facility which was issued by the Department prior to December 23, 2000, shall file with the Department an application for permit modification to bring the facility operation into compliance with the following requirements for radioactive material monitoring and detection that became effective on December 23, 2000, according to the following schedule, unless the Department imposes in writing an earlier date in a specific situation for reasons of public health, safety or environmental protection:

(1) *Municipal waste landfill.* An application for a permit modification addressing the requirements of §§ 273.133(a)(14) and 273.140(a) (relating to map and grid requirements and radiation protection action plan) shall be filed by December 23, 2001.

(2) *Construction/demolition waste landfills.* An application for a permit modification addressing the requirements of §§ 277.133(a)(14) and 277.140 (relating to map and grid requirements and radiation protection action plan) shall be filed by December 23, 2001.

(3) *Municipal waste transfer facility.* An application for a permit modification addressing the requirements of §§ 279.103(a)(18) and 279.110 (relating to maps and related information; and radiation protection action plan) shall be filed by December 23, 2002.

(4) *Commercial municipal waste composting facility that will receive sewage sludge or unseparated municipal waste, or both.* An application for a permit modification addressing the requirements of §§ 281.112(a)(20) and 281.119 (relating to maps and related information; and radiation protection action plan) shall be filed by June 23, 2001.

(5) *Resource recovery and other processing facilities.* Including infectious and chemotherapeutic waste processing facilities, an application for a permit modification addressing the requirements of §§ 283.103(20) and

283.113 (relating to maps and related information; and radiation protection action plan) shall be filed by September 23, 2001.

GENERAL APPLICATION REQUIREMENTS

§ 271.122. Form of application.

(a) An application for a permit under this article shall be submitted to the Department, in writing, on forms provided by the Department.

(b) An application for a permit shall be accompanied by information, maps, plans, specifications, designs, analyses, test reports and other data as may be required by the Department to determine compliance with this article.

(c) Information in the application shall be current, presented clearly and concisely and supported by appropriate references to technical and other written material available to the Department.

(d) An application for a permit shall be prepared by or under the supervision of a Pennsylvania registered professional engineer. The design section of the application shall bear the seal of a Pennsylvania registered professional engineer. The soils, geology and groundwater sections of a permit application shall be completed by experts in the fields of soil science, soil engineering, geology and groundwater. The geology and groundwater sections of a permit application also shall be completed under the supervision of a registered professional geologist licensed in Pennsylvania.

(e) To the greatest extent feasible, a permit application shall be submitted to the Department on paper that is manufactured partly or entirely from postconsumer material.

§ 271.123. Right of entry.

(a) An application shall contain a description of the documents upon which the applicant bases the legal right to enter and operate a municipal waste processing or disposal facility within the proposed permit area. The application shall also state whether that right is the subject of pending litigation.

(b) The application shall provide one of the following for lands within the permit area:

(1) A copy of the written consent to the applicant by the current landowner to operate a municipal waste processing or disposal facility.

(2) A copy of the document of conveyance that expressly grants or reserves the applicant the right to operate a municipal waste processing or disposal facility and an abstract of title relating the documents to the current landowner.

(c) An application shall include, upon a form prepared and furnished by the Department, the irrevocable written consent of the landowner to the Commonwealth and its authorized agents to enter the proposed permit area. The consent shall be applicable prior to the initiation of operations, for the duration of operations at the facility, and for up to 10 years after final closure for the purpose of inspection and monitoring, maintenance or abatement measures deemed necessary by the Department to carry out the purposes of the act and the environmental protection acts.

(d) The forms required by subsections (b) and (c) shall be deemed to be recordable documents. Prior to the initiation of operations under the permit, the forms shall be recorded by the applicant at the office of the recorder of deeds in the county in which the proposed permit area

is situated. This subsection does not apply to agricultural utilization permits under Chapter 275 (relating to land application of sewage sludge) nor to permits issued under Subchapter J (relating to beneficial use of sewage sludge by land application).

(e) Subsequent landowners shall be deemed to have constructive knowledge if the forms required by this section have been properly filed at the office of the recorder of deeds in the county in which the proposed solid waste activity is situated.

§ 271.124. Identification of interests.

(a) An application for a municipal waste processing or disposal permit shall contain the following information on a form provided by the Department:

(1) The names, addresses and telephone numbers of:

(i) The permit applicant.

(ii) Any contractor, including a contractor for gas or energy recovery from the proposed operation, if the contractor is a person other than the applicant.

(iii) Related parties to the applicant, including the relationship to the applicant.

(2) The names and addresses of the owners of record of surface and subsurface areas within, and contiguous to, parts of the proposed permit area.

(3) The names and addresses of the holders of record to a leasehold interest of surface and subsurface areas within, and contiguous to, parts of the proposed permit area.

(b) An application shall contain a statement of whether the applicant is an individual, corporation, partnership, limited partnership, limited liability company, government agency, proprietorship, municipality, syndicate, joint venture or other association or entity. For applicants other than sole proprietorships, the application shall contain the following information, if applicable:

(1) The names and addresses of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant.

(2) For corporations, the principal shareholders.

(3) For corporations, the names, principal places of business and Internal Revenue Service tax identification numbers of United States parent corporations of the applicant, including ultimate parent corporations and United States subsidiary corporations of the applicant and the applicant's parent corporations.

(4) The names and addresses of other persons or entities having or exercising control over any aspect of the proposed facility that is regulated by the Department, including, but not limited to, associates and agents.

(c) If the applicant or an officer, principal shareholder, general or limited partner, limited liability company member or manager or other related party to the applicant, has a beneficial interest in, or otherwise manages or controls another person or municipality engaged in the business of solid waste collection, transportation, storage, processing, treatment or disposal, the application shall contain the following information:

(1) The name, address and tax identification number or employer identification number of the corporation or other person or municipality.

(2) The nature of the relationship or participation with the corporation or other person or municipality.

(d) An application shall list permits or licenses, issued by the Department under the environmental protection acts to each person or municipality identified in subsection (b) and to other related parties to the applicant, that are currently in effect or have been in effect in at least part of the previous 10 years. This list shall include the type of permit or license, number, location, issuance date and, when applicable, the expiration date.

(e) An application shall identify the solid waste processing or disposal facilities in this Commonwealth which the applicant or a person or municipality identified in subsection (b) and other related parties to the applicant currently owns or operates, or owned or operated in the previous 10 years. For each facility, the applicant shall identify the location, type of operation and State or Federal permits under which they operate or have operated. Facilities which are no longer permitted or which were never under permit shall also be listed.

§ 271.125. Compliance information.

(a) An application shall contain the following information for the 10-year period prior to the date on which the application is filed:

(1) A description of notices of violation, including the date, location, nature and disposition of the violation, that were sent by the Department to the applicant or a related party, concerning the act, the environmental protection acts, a regulation or order of the Department or a condition of a permit or license. In lieu of a description, the applicant may provide a copy of notices of violation.

(2) A description of administrative orders, civil penalty assessments and bond forfeiture actions by the Department, and civil penalty actions adjudicated by the EHB, against the applicant or a related party concerning the act, the environmental protection acts or a regulation or order of the Department or a condition of a permit or license. The description shall include the date, location, nature and disposition of the actions. In lieu of a description, the applicant may provide a copy of the orders, assessments and actions.

(3) A description of summary, misdemeanor or felony convictions, pleas of guilty or pleas of no contest that have been obtained in this Commonwealth against the applicant or a related party under the act and the environmental protection acts, or under other acts in this Commonwealth concerning the storage, collection, treatment, transportation, processing or disposal of solid waste. The description shall include the date, location, nature and disposition of the actions.

(4) A description of court proceedings concerning the act or the environmental protection acts that were not described under paragraph (3), in which the applicant or a related party has been a party. The description shall include the date, location, nature and disposition of the proceedings.

(5) A description of consent orders, consent adjudications, consent decrees or settlement agreements in this Commonwealth entered by the applicant or a related party concerning the act, the environmental protection acts or an environmental protection ordinance, in which the Department, the EPA or a county health department was a party. The description shall include the date, location, nature and disposition of the action. In lieu of a description, the applicant may provide a copy of the order, adjudication, decree or agreement.

(6) For facilities and activities identified under § 271.124 (relating to identification of interests), a state-

ment of whether the facility or activity was the subject of an administrative order, consent agreement, consent adjudication, consent order, settlement agreement, court order, civil penalty, bond forfeiture proceeding, criminal conviction, guilty or no contest plea to a criminal charge or permit or license suspension or revocation under the act or the environmental protection acts. If the facilities or activities were subject to these actions, the applicant shall state the date, location, nature and disposition of the violation. In lieu of a description, the applicant may provide a copy of the appropriate document. The application shall also state whether the Department has denied a permit application filed by the applicant or a related party, based on compliance status.

(7) When the owner or operator is a corporation, partnership or limited liability company, a list of each principal shareholder, partner or member that has also been a principal shareholder, partner or member of another corporation, partnership or limited liability company which has committed violations of the act or the environmental protection acts. The list shall include the date, location, nature and disposition of the violation, and shall explain the relationships between the principal shareholder, partner or member and both of the following:

(i) The owner or operator.

(ii) The other corporation, partnership or limited liability company.

(8) A description of misdemeanor or felony convictions, pleas of guilty and pleas of no contest, by the applicant or a related party for violations outside of this Commonwealth of the environmental protection acts. The description shall include the date of the convictions or pleas, and the date, location and nature of the offense.

(9) A description of final administrative orders, court orders, court decrees, consent decrees or adjudications, consent orders, final civil penalty adjudications, final bond forfeiture actions or settlement agreements involving the applicant or a related party for violations outside of this Commonwealth of the environmental protection acts. The description shall include the date of the action and the location and nature of the underlying violation. In lieu of a description, the applicant may provide a copy of the appropriate document.

(b) If the waste to be disposed or processed is generated outside the county in which the facility is proposed to be located, the application shall also include a description of applicable State and local laws, including State and local solid waste management plans adopted under those laws, that may affect, limit or prohibit the transportation, processing or disposal of the waste at the proposed facility. The application shall state whether or not disposal or processing of waste from each generating county may violate each applicable law or plan.

§ 271.126. Requirement for environmental assessment.

(a) Except as provided in subsection (b), an application for a municipal waste disposal or processing permit shall include an environmental assessment on a form prescribed by the Department.

(b) The following permit applications do not require an environmental assessment unless the Department determines that the facility may have a significant effect on the environment:

(1) Permit applications for the beneficial use of municipal waste.

(2) Permit applications for the processing of municipal waste under Subchapter I (relating to beneficial use).

(3) Permit modification applications that are not for major modifications under § 271.144 (relating to public notice and public hearings for permit modifications).

(c) For facilities which have previously been subject to the environmental assessment process, the Department will limit the scope of review under that process to the following:

(1) Proposed modifications to the facility.

(2) Changes in the areas covered by the assessment that have occurred since the assessment was conducted.

§ 271.127. Environmental assessment.

(a) *Impacts.* Each environmental assessment in a permit application shall include at a minimum a detailed analysis of the potential impact of the proposed facility on the environment, public health and public safety, including traffic, aesthetics, air quality, water quality, stream flow, fish and wildlife, plants, aquatic habitat, threatened or endangered species, water uses, land use and municipal waste plans. The applicant shall consider features such as scenic rivers, recreational river corridors, local parks, State and Federal forests and parks, the Appalachian Trail, historic and archaeological sites, National wildlife refuges, State natural areas, National landmarks, farmland, wetland, special protection watersheds designated under Chapter 93 (relating to water quality standards), airports, public water supplies and other features deemed appropriate by the Department or the applicant. The permit application shall also include all correspondence received by the applicant from any State or Federal agency contacted as part of the environmental assessment.

(b) *Harms.* The environmental assessment shall describe the known and potential environmental harms of the proposed project. The applicant shall provide the Department with a written mitigation plan which explains how the applicant plans to mitigate each known or potential environmental harm identified and which describes any known and potential environmental harms not mitigated. The Department will review the assessment and mitigation plans to determine whether there are additional harms and whether all known and potential environmental harms will be mitigated. In conducting its review, the Department will evaluate each mitigation measure and will collectively review mitigation measures to ensure that individually and collectively they adequately protect the environment and the public health, safety and welfare.

(c) *Municipal waste landfills, construction/demolition waste landfills and resource recovery facilities.* If the application is for the proposed operation of a municipal waste landfill, construction/demolition waste landfill or resource recovery facility, the applicant shall demonstrate that the benefits of the project to the public clearly outweigh the known and potential environmental harms. In making this demonstration, the applicant shall consider harms and mitigation measures described in subsection (b). The applicant shall describe in detail the benefits relied upon. The benefits of the project shall consist of social and economic benefits that remain after taking into consideration the known and potential social and economic harms of the project and shall also consist of the environmental benefits of the project, if any.

(d) *Other facilities.* If the application is for the proposed operation of another type of facility and the

applicant or the Department upon review determines that known or potential environmental harm remains despite the mitigation measures described in subsection (b), the applicant shall demonstrate that the benefits of the project to the public clearly outweigh the known and potential environmental harms. In making this demonstration, the applicant shall consider harms and mitigation measures described in subsection (b). The applicant shall describe in detail the benefits relied upon. The benefits of the project shall consist of social and economic benefits that remain after taking into consideration the known and potential social and economic harms of the project and shall also consist of the environmental benefits of the project, if any.

(e) *Identification of harms and benefits.* Known and potential harms and benefits of a proposed project may also be identified by the Department or any other person or municipality.

(f) *Need.* The description required by subsections (c) and (d) may include an explanation of the need for the facility, if any. Simply adding new capacity does not establish need for a facility.

(g) *Evaluation.* After consultation with other appropriate agencies and potentially affected persons, the Department will evaluate the environmental assessment in Phase I of permit review or otherwise prior to technical review.

(h) *Revision.* The Department may require submission of a revised environmental assessment if additional harms or potential harms are discovered during any phase of permit application review.

§ 271.128. Permit application fee.

(a) An application for a new permit shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for the following amount:

(1) Eighteen thousand five hundred dollars for a municipal waste landfill.

(2) Nineteen thousand two hundred fifty dollars for a construction/demolition waste landfill.

(3) One thousand two hundred dollars for the agricultural utilization of sewage sludge.

(4) Four thousand dollars for the utilization of sewage sludge for land reclamation and land disposal.

(5) Four thousand four hundred dollars for a transfer facility.

(6) For municipal waste processing facilities other than transfer facilities:

(i) One thousand nine hundred dollars for incinerators or resource recovery facilities.

(ii) Four thousand dollars for other municipal waste processing facilities.

(7) Seventeen thousand three hundred dollars for demonstration facilities.

(b) An application for a permit modification under § 271.144 (relating to public notice and public hearings for permit modifications) shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for the following amount:

(1) Three hundred dollars for the addition of types of waste not approved in the permit.

(2) Seven thousand eight hundred dollars for municipal waste landfills and construction/demolition waste landfills.

(3) Four hundred dollars for the agricultural utilization of sewage sludge.

(4) One thousand one hundred dollars for the utilization of sewage sludge for land reclamation and land disposal.

(5) Seven hundred dollars for transfer facilities.

(6) For municipal waste processing facilities other than transfer facilities:

(i) One thousand five hundred dollars for incinerators or resource recovery facilities.

(ii) Seven hundred dollars for other municipal waste processing facilities.

(7) Six thousand seven hundred dollars for demonstration facilities.

(c) An application for a minor permit modification, including a minor permit modification under § 271.222 (relating to permit modification), shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$300.

(d) An application for a permit reissuance under § 271.221 (relating to permit reissuance) shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$300.

(e) An application for a permit renewal under § 271.223 (relating to permit renewal) shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$300.

PUBLIC NOTICE AND COMMENTS

§ 271.141. Public notice by applicant.

(a) An applicant for a new permit, major permit modification, permit renewal or permit reissuance and a person or municipality submitting a closure plan shall publish once a week for 3 consecutive weeks a notice in a newspaper of general circulation in the area where the facility or proposed facility is located. The notice shall meet the following requirements:

(1) Include a brief description of the location and proposed operation or closure of the facility, and indicate where copies of the application or closure plan will be filed. If groundwater degradation exists at closure or occurs after closure, the notice shall include a list of contaminants, abatement measures taken prior to closure, if applicable, proposed remediation measures and proposed remediation standards to be met. If the permittee proposes to utilize the alternative groundwater protection standard, the notice shall include a 30-day public and municipal comment period during which the municipality can request to be involved in the development of the remediation and reuse plans for the site.

(2) State that the host municipality and county may submit comments to the Department within 60 days of receipt of the application or closure plan, recommending conditions upon, revisions to and approval or disapproval of the permit or closure plan, with the specific reasons described in the comments.

(3) State that the Department will accept comments from the public on the permit application or closure plan and state the procedure for submission of comments.

(4) If the applicant proposes a design alternative under § 271.231 (relating to equivalency review procedure), it shall so state, and briefly describe the alternative design.

(5) If the application is for a new municipal waste landfill, construction/demolition waste landfill, transfer facility or resource recovery facility, or for a major modification of a municipal waste landfill permit, it shall be in the form of a display advertisement.

(b) An applicant for a new permit, permit reissuance, permit renewal or major permit modification, and a person or municipality submitting a closure plan, shall also notify by certified mail owners and occupants of land contiguous to the site or the proposed permit area of the nature and extent of the proposed facility or closure plan. If the applicant proposes a design alternative under § 271.231, the notice shall so state and briefly describe the alternative design. The applicant shall submit proof of the notice in the form of a United States Postal Service postmarked signature card or other dated acknowledgment form of private letter carrier services.

(c) The Department may require the person or municipality to provide additional public notice if the Department determines that the proposed facility or closure plan is of significant interest to the public or may cause significant environmental impact.

(d) An applicant for a new permit, permit reissuance, permit renewal or major permit modification, and a person or municipality submitting a closure plan shall, immediately before the application or plan is filed with the Department, give written notice to each municipality in which the site or proposed permit area is located. If groundwater degradation exists at closure or occurs after closure, the notice shall include a list of contaminants, abatement measures taken prior to closure, if applicable, proposed remediation measures and proposed remediation standards to be met. If the permittee proposes to utilize the alternative groundwater protection standard, the notice shall include a 30-day public and municipal comment period during which the municipality can request to be involved in the development of the remediation and reuse plans for the site. If the applicant proposes a design alternative under § 271.231, the notice shall so state and briefly describe the alternative design. The applicant shall file with the Department a copy of the notice as part of the application or plan. The Department will not issue a permit for 60 days from the date of the notice unless each municipality to which the notice is sent submits a written statement to the Department expressly waiving the 60-day period.

(e) Proof of compliance with the applicable requirements of this section shall be submitted within 30 days of filing its permit application or closure plan with the Department.

§ 271.142. Public notice by Department.

(a) The Department will publish a notice in the *Pennsylvania Bulletin* of the following:

(1) Receipt of an application for a new permit, permit reissuance, permit renewal or major permit modification.

(2) Receipt of a closure plan and if groundwater degradation exists at closure or occurs after closure, the notice shall include a list of contaminants, abatement measures taken prior to closure, if applicable, proposed remediation measures and proposed remediation standards to be met. If the permittee proposes to utilize the alternative groundwater protection standard, the notice shall include a 30-day public and municipal comment period during

which the municipality can request to be involved in the development of the remediation and reuse plans for the site.

(3) Final action on an application for a new permit, permit reissuance, permit renewal or major permit modification.

(4) Justification for overriding county or host municipality recommendations regarding an application for a new permit, permit reissuance, permit renewal or major permit modification under section 504 of the act (35 P. S. § 6018.504).

(b) The Department will submit a copy of an application for a new permit, permit reissuance, permit renewal, major permit modification or closure plan to the host municipality and the appropriate county, county planning agency and county health department, if one exists. If groundwater degradation exists at closure or occurs after closure, the Department will include a copy of the applicant's list of contaminants, identification of abatement measures taken prior to closure, if applicable, proposed remediation measures and proposed remediation standards to be met.

(c) The Department will provide written notice of final action taken on an application for a new permit, permit reissuance, permit renewal, permit modification or closure plan to the host municipality and the appropriate county, county planning agency and county health department, if one exists.

§ 271.144. Public notice and public hearings for permit modifications.

(a) An application for a permit modification for municipal waste landfills or construction/demolition waste landfills shall be considered an application for a major permit modification under §§ 271.141—271.143 (relating to public notice by applicant; public notice by Department; and public comments) if the application involves the following:

- (1) Change in site volume—waste capacity.
- (2) Change in the average or maximum daily waste volume.
- (3) Change in excavation contours or final contours, including final elevations and slopes, if the change results in increased disposal capacity or impacts the groundwater isolation distance or groundwater quality.
- (4) Change in permitted acreage.
- (5) Change in the approved groundwater monitoring plan, except for the addition or replacement of wells or parameters.
- (6) Change in approved leachate collection and treatment method.
- (7) Change in gas monitoring or management plan, or both, except when installation of additional wells or improvements to the collection systems are proposed.
- (8) Change in the approved closure plan.
- (9) Acceptance for disposal of types of waste not approved in the permit.
- (10) Change in ownership, unless the owner is the permittee, in which case permit reissuance is required under § 271.221 (relating to permit reissuance).
- (11) Change in approved design under § 271.231 (relating to equivalency review procedure) if the design has not been previously approved through an equivalency review.
- (12) The submission of an abatement plan.

(13) The disposal of waste in areas that have reached final permitted elevations.

(14) Change in operator, unless the operator is the permittee, in which case permit reissuance is required under § 271.221.

(15) Submission of a radiation protection action plan.

(b) An application for a permit modification for a municipal waste processing facility shall be considered an application for a major permit modification under §§ 271.141—271.143, if the application involves the following:

- (1) Changes in specifications or dimensions of waste storage or residue storage areas if the change results in increased processing or storage capacity.
- (2) Change in the approved groundwater monitoring plan, except for the addition or replacement of wells or parameters.
- (3) Change in approved closure plan.
- (4) Acceptance for processing of types of waste not approved in the permit.
- (5) Change in residue disposal area, if applicable.
- (6) Change in approved design under § 271.231 if the design has not been previously approved through an equivalency review.
- (7) Change in the maximum daily waste volume.
- (8) Change in ownership, unless the owner is the permittee, in which case permit reissuance is required under § 271.221.

(9) Change in operator, unless the operator is the permittee, in which case permit reissuance is required under § 271.221.

(10) Submission of a radiation protection action plan.

(c) The Department may require public notice or public hearings for an application for permit modification not described in this section that the Department believes should be subject to public notice or public hearings.

(d) If the Department modifies a permit under section 503(e) of the act (35 P. S. § 6018.503(e)) without first receiving a permit application, it will subsequently publish notice of the permit modification in the *Pennsylvania Bulletin*.

Subchapter C. PERMIT REVIEW PROCEDURES AND STANDARDS

PERMIT REVIEW

§ 271.201. Criteria for permit issuance or denial.

A permit application will not be approved unless the applicant affirmatively demonstrates that the following conditions are met:

(1) For a disposal or processing permit, each of the entities that is the permit applicant, an owner of the facility or a part thereof, an operator of the facility, or a related party to one or more of the foregoing entities, is one of the following: a natural person; a partnership; a corporation; a municipality of this Commonwealth; a municipal authority or joint municipal authority established under the laws of the Commonwealth; an agency of the Commonwealth; the Commonwealth; an agency of the Federal Government; or the Federal Government.

(2) The permit application is complete and accurate.

(3) The requirements of the environmental protection acts, this title and PA.CONST. art. I, § 27 have been complied with.

(4) Mitigation plans required by § 271.127 (relating to environmental assessment) are implemented if required by the Department.

(5) Municipal waste management operations under the permit will not cause surface water pollution or ground-water pollution, except that the Department may approve an application for permit modification to control or abate groundwater pollution under a new or modified ground-water collection or treatment facility.

(6) When the potential for mine subsidence exists, subsidence will not endanger or lessen the ability of the proposed facility to operate in a manner that is consistent with the act, the environmental protection acts and this title, and will not cause the proposed operation to endanger the environment or public health, safety or welfare.

(7) The proposed facility will not interfere with implementation of the approved host county plan or another county, municipality or State plan approved under applicable law.

(8) The proposed facility will not interfere with municipal waste collection, storage, transportation, processing or disposal in the host county.

(9) For a new municipal waste landfill subject to 49 U.S.C.A. § 44718(d) (relating to limitation on construction of landfills), the Administrator of the Federal Aviation Administration has determined that exemption of the landfill from application of 49 U.S.C.A. § 44718(d) would have no adverse impact on aviation safety. This exemption is only available if the state aviation agency of the state in which the airport is located has requested that the Administrator exempt the landfill from the application of 49 U.S.C.A. § 44718(d).

§ 271.202. Receipt of application and completeness review.

(a) After receipt of a permit application, the Department will determine whether the application is administratively complete.

(b) For purposes of this section, "receipt of a permit application" does not occur for an application for a new facility or a permit modification that would result in an increased average or maximum daily waste volume, increased disposal capacity or expansion of the permit area, until the following requirements are met:

(1) The Department, applicant and municipal officials meet to discuss the permit application, the Department's permit application review process and the public involvement steps in that process and to hear and understand the concerns and questions of the municipal officials, as described in the Department's *Local Municipality Involvement Process Policy*, Document Number 254-2100-100. The Department may invite other persons from the local municipalities who have an interest in the application.

(2) An alternative project timeline is established for review of a permit application for a municipal waste landfill, construction/demolition waste landfill or resource recovery facility through negotiation among the Department, applicant and representatives of the host county and host municipality. If the parties are unable to reach agreement, the Department will determine an appropriate timeline, taking into consideration the level of public interest and incorporating into the timeline sufficient opportunity for meaningful public participation. Public

notice of a negotiated timeline will be made in the *Pennsylvania Bulletin* as part of the permit application receipt announcement required by § 271.142 (relating to public notice by Department).

(c) For purposes of this section, an application is administratively complete if it contains necessary information, maps, fees and other documents, regardless of whether the information, maps, fees and documents would be sufficient for issuance of the permit. If the Phase I and Phase II parts of the application for a landfill are submitted separately, the application will not be considered to be administratively complete until both parts are determined to be administratively complete.

(d) If the application is not administratively complete, the Department will, within 60 days of receipt of the application, return it to the applicant, along with a written statement of the specific information, maps, fees and documents that are required to make the application administratively complete.

(e) The Department will deny the application if the applicant fails to provide the information, maps, fees and documents within 90 days of receipt of the notice in subsection (d).

(f) The Department will not accept a permit application for an expansion that would result in an increase in capacity of a municipal waste landfill or construction/demolition waste landfill if more than 5 years of disposal capacity remains at the landfill based upon information submitted in the most recent annual report or equivalent information that includes a topographic survey map and a description of the capacity used since the last annual report.

(g) The following definitions apply in this section:

(1) *Local municipalities.* Local municipalities include the host municipality, the host county, municipalities adjacent to the host municipality or municipalities, municipalities located within 1 mile of the permitted or proposed area, other municipalities that demonstrate that they may be adversely impacted by the proposed project and municipalities located along the approach routes.

(2) *Approach routes.* Approach routes are routes from the nearest limited access (or major) highway used by vehicles traveling to and from the facility.

(3) *Municipal officials.* Representatives of local municipalities with whom the Department will coordinate pre-permit application and early permit application review.

§ 271.203. Review period.

(a) The Department will issue or deny permit applications for municipal waste landfills, construction/demolition waste landfills, and resource recovery facilities within the time period established in the alternative project timeline developed under § 271.202 (relating to receipt of application and completeness review).

(b) The time period in subsection (a) does not include a period beginning with the date that the Department in writing has requested the applicant to make substantive corrections or changes to the application and ending with the date that the applicant submits the corrections or changes to the Department's satisfaction.

GENERAL PERMIT RESTRICTIONS

§ 271.211. Term of permits.

(a) A permit will be issued for a fixed term consistent with the approved operation and design plans of the facility, and not to exceed 10 years. An operator may

apply for permit renewal prior to the expiration of the permit terms under § 271.223 (relating to permit renewal).

(b) The Department may grant a longer fixed term if:

(1) The application is complete for the longer fixed term.

(2) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for the facility, and this need is confirmed, in writing, by the applicant's source of financing.

(c) No municipal waste may be disposed, processed or beneficially used under a permit after the expiration of the permit term for disposal, processing or beneficial use. Expiration of the permit term does not limit the operator's responsibility for complying with closure and postclosure requirements and all other requirements under the act, the environmental protection acts, regulations thereunder or the terms or conditions of its permit.

(d) The Department will, from time to time, but at intervals not to exceed 5 years, review a permit issued under this article. In its review, the Department will evaluate the permit to determine whether it reflects currently applicable operating requirements, as well as current technology and management practices. The Department may require modification, suspension or revocation of the permit when necessary to carry out the purposes of the act, the environmental protection acts and this title. The Department will require the operator to provide a summary of changes to the operations since the initial permit or latest major permit modification was approved.

(e) If no municipal waste is processed or disposed under a permit within 5 years of the date of issuance by the Department of a permit for the facility, the permit is void.

(f) A municipal waste management facility without a permit term that was permitted by the Department prior to April 9, 1988, shall have a permit term that expires April 9, 1993. The operator of the facility may apply for permit renewal under § 271.223.

§ 271.212. Conditions of permits.

A permit issued by the Department will, at a minimum, ensure and contain the following conditions:

(1) Except to the extent that the permit states otherwise, the permittee shall conduct solid waste management activities as described in the approved application.

(2) The permittee shall allow authorized representatives of the Commonwealth, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access to areas in which operations will be, are being or have been conducted.

(3) The permittee shall affect by solid waste management activities only lands specifically approved in the permit and for which financial assurances have been filed with the Department under Subchapter D (relating to financial assurances requirements).

(4) The permittee shall notify the Department within the time stated in the permit and if no time is stated within 45 days, on a form prepared by the Department, after the transfer has occurred of a controlling interest in the owner or operator, if the transfer does not require a permit modification under § 271.144 (relating to public notice and public hearings for permit modifications) or a permit reissuance under § 271.221 (relating to permit reissuance). The notification shall contain the same information

relating to the person who obtained the controlling interest as is required of a permit applicant in a permit application under §§ 271.124 and 271.125(a) (relating to identification of interests; and compliance information). A "controlling interest" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

PERMIT REISSUANCE, MODIFICATION AND RENEWAL

§ 271.221. Permit reissuance.

(a) A transfer, assignment or sale of rights granted under a permit may not be made without obtaining permit reissuance.

(b) An application for permit reissuance shall be made on forms provided by the Department and shall contain the following:

(1) A written statement that the person assumes, upon reissuance of the permit, liability for operation, maintenance, pollution, closure, postclosure maintenance, final cover and other responsibilities under the act, the environmental protection acts, this title and the terms and conditions of the permit from the date of original issuance of the permit.

(2) A detailed explanation of the schedule and procedure for transferring control of the facility to the applicant.

(3) One of the following:

(i) An entirely new application under this article.

(ii) A written statement expressly agreeing to abide by permit conditions, and assuming responsibility for violations which have occurred, or may occur, on the area previously affected. The statement shall include the following:

(A) The identity of the applicant as required in § 271.124 (relating to identification of interests) and the compliance information required in § 271.125 (relating to compliance information).

(B) For a municipal waste disposal permit, a property map showing the extent to which disposal has been accomplished under the existing permit.

(C) The name and address of the existing permittee.

(D) Appropriate financial assurances in the amount specified by the Department under Subchapter D (relating to financial assurance requirements).

(E) Proof of public notice as required by § 271.141 (relating to public notice by applicant).

(c) Departmental approval of permit reissuance under this section does not limit the original permittee's responsibility, liability, duty or obligation under law.

§ 271.222. Permit modification.

(a) A permittee shall file with the Department an application for permit modification:

(1) Prior to making a change in the design or operational plans in the application upon which the permit is issued.

(2) Prior to making a change that would affect the terms or conditions of the existing permit.

(3) Prior to conducting solid waste processing or disposal activities that are not approved in the permit.

(4) If otherwise required by the Department.

(b) An application for permit modification shall be complete and contain the following information:

(1) The permittee's name, address and permit number.

(2) A description of the proposed modifications, including appropriate maps, plans and applications to demonstrate that the proposed modification complies with the act, the environmental protection acts and this title.

(c) The Department may issue onsite, in writing, a conditional approval of a minor modification for the construction of liner systems or of erosion and sedimentation control devices if impracticable to comply with subsections (a) and (b) and the modification will improve the permitted design. Approval is conditioned upon timely submission of the information and fee required in subsection (d).

(d) Within 5 working days of obtaining written onsite Department conditional approval of a minor modification under subsection (c), the permittee shall file with the Department documentation to modify its permit application in accordance with the conditional approval issued under subsection (c). The permit modification documentation shall be accompanied by the fee required in § 271.128(c) (relating to permit application fee).

§ 271.223. Permit renewal.

(a) A permittee that plans to dispose of or process municipal waste after the expiration of the term set under § 271.211 (relating to term of permits) shall file a complete application for permit renewal on forms provided by the Department. The complete application for a processing facility shall be filed at least 270 days before the expiration date of the permit term and for a disposal facility at least 1 year before the expiration date of the permit term. For a processing facility with a permit term that expires on or before 270 days, the application for permit renewal shall be filed at least 180 days prior to the expiration date of the permit term. For a disposal facility with a permit term that expires on or before the application for permit renewal, shall be filed at least 180 days prior to the expiration date of the permit term.

(b) An application for renewal of a municipal waste disposal permit shall include a clear statement of the remaining permitted capacity of the facility, with documentation, in relation to the requested term of the permit renewal.

(c) A permit renewal, if approved by the Department, may only continue the term of the permit on its presently permitted acreage, including the terms and conditions of the permit. An applicant that seeks to add permitted acreage or change the terms or conditions of the permit shall also file an application for a permit modification.

(d) A permit renewal shall be for a term not to exceed the term of the original permit.

OTHER PERMITTING PROVISIONS

§ 271.231. Equivalency review procedure.

(a) In approving a permit application under this article, the Department may authorize, in writing, alternatives to the design requirements in this article only if, and only to the extent that, specific sections in this article expressly state that alternatives may be authorized under this section.

(b) A person requesting an alternative under this section shall submit a request to the Department, in writing. The request shall:

(1) Identify the specific regulation for which an equivalency alternative is being sought.

(2) Demonstrate, through supporting technical documentation, justification and quality control procedures, that the requested alternative to the design requirements in a section of the regulations will, for the life of operations at the facility, achieve the performance standards in that section, and will do so in a manner that is equivalent or superior to the design requirements in that section.

(c) No equivalency alternative will be approved unless the application affirmatively demonstrates that the following conditions are met:

(1) The request is complete and accurate and the requirements of this section have been complied with.

(2) The proposed alternative will, for the life of operations at the facility, achieve the performance standards in the section of regulations for which the alternative to the design requirements in that section is sought, and will do so in a manner that is equivalent or superior to the design requirements in that section.

(3) The proposed alternative will not cause pollution to the air, water or other natural resources of this Commonwealth, and will not harm or endanger public health, safety or welfare.

(d) In lieu of approving an equivalency alternative for the entire facility, the Department may approve an equivalency alternative for part of a site as provided in Subchapter F (relating to demonstration facilities).

(e) If an alternative design is approved through a major permit modification, the Department may approve the applicability of the alternative design to another applicant through a minor permit modification.

Subchapter D. FINANCIAL ASSURANCES REQUIREMENTS GENERAL

§ 271.301. Scope.

(a) This subchapter sets forth minimum requirements for demonstrating sufficient financial responsibility for the operation of municipal waste processing or disposal facilities by providing for bond guarantees for the operation of those facilities, and by providing for minimum standards for insurance protection for personal injury and property damage to third parties arising from the operation of the facilities.

(b) This subchapter applies to a person or municipality that operates the facility but is not a permit applicant or permittee when the person or municipality submits a bond or provides insurance. Nothing in this subchapter excuses the applicant or permittee from complying with this subchapter.

(c) A municipality operating a municipal waste landfill solely for the disposal of municipal waste may satisfy the requirements of this subchapter by establishing a trust fund under § 271.328 (relating to trust fund for municipally operated landfills) and this subchapter. A municipality that disposes, has disposed or proposes to dispose of residual waste at a municipal waste landfill that it operates may not satisfy the requirements of this subchapter by establishing a trust fund and shall file a bond under this subchapter.

(d) A department or agency of the United States or the Commonwealth which owns and operates a municipal waste processing or disposal facility shall satisfy the

requirements of this subchapter. The department or agency of the United States or the Commonwealth may satisfy financial assurance requirements by using applicable forms of financial assurance under this subchapter or by other means of financial assurance approved by the Department.

(e) When an application for the land application of sewage sludge is made by a municipality of a municipal authority, the filing of a bond with the Department is not required as a condition for issuance of a permit to the municipality or municipal authority for the application of the sewage sludge for land reclamation or agricultural utilization purposes.

BOND AND TRUST REQUIREMENTS—GENERAL

§ 271.312. Existing facilities.

(a) Except as provided in § 271.301(c) (relating to scope), a person or municipality operating a municipal waste landfill or construction/demolition waste landfill on or after April 9, 1988, who has not filed a bond under the act, shall file a bond with the Department within 90 days by July 8, 1988. Nothing in this section prevents the Department from requiring a bond to be submitted as required by the act for another facility operating after April 9, 1988.

(b) A person or municipality that possesses a municipal waste landfill permit or a demolition waste landfill permit under the act, or a permit for an impoundment used for municipal waste disposal issued under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), which permit was issued by the Department prior to April 9, 1988, shall submit an updated bond in an approved bond amount as required by the Department, prior to Departmental approval of a closure plan submitted under § 271.113 (relating to closure plan). Nothing in this section prevents the Department from requiring a bond to be an updated bond under this chapter for another facility operating after April 9, 1988.

(c) A municipality operating a municipal waste landfill solely for the disposal of municipal waste, and which received a permit from the Department under the act before September 26, 1988, shall establish a trust fund under § 271.328 (relating to trust fund for municipally operated landfills) and this subchapter or post another bond consistent with this subchapter as of November 25, 1988.

(d) The bond required by this section shall be submitted under the requirements of this subchapter, on a form prepared by the Department, shall be made payable to the Department and shall provide for continuous liability from the initiation of operations at the facility. The amount of the bond shall be determined in accordance with § 271.331 (relating to bond and trust amount determination).

(e) The trust required by this section shall be submitted under the requirements of this subchapter, on a form approved by the Department, and shall provide for continuous liability from the initiation of operations at the facility. The amount of the trust shall be determined in accordance with § 271.331.

(f) A department or agency of the United States or the Commonwealth which owns and operates a municipal waste processing or disposal facility shall satisfy the requirements of this section by filing a bond with the Department under § 271.313(a) (relating to form, terms and conditions of the bond or trust) or by another means of financial assurance approved by the Department which

satisfies the terms and conditions for bonds under § 271.313(b)—(e) and this subchapter.

BOND AND TRUST REQUIREMENTS—TYPES

§ 271.321. Special terms and conditions for surety bonds.

(a) The Department will not accept the bond of a surety company that has failed or unreasonably delayed, as determined by the Department, in making payment on a forfeited surety bond.

(b) The Department will accept only the bond of a surety licensed or authorized to do business in this Commonwealth. In addition, for facilities permitted after December 23, 2000, the Department will accept only the bond of a surety which is listed in Circular 570 of the United States Department of Treasury. If a surety is removed from Circular 570 or is no longer authorized to do business in this Commonwealth, the bond of the surety shall be replaced.

(c) The bond shall provide that full payment shall be made under the bond within 30 days of receipt of the Department's declaration of forfeiture notwithstanding judicial or administrative appeal of the forfeiture.

(d) The surety may cancel the bond by sending written notice of cancellation to the Department, the operator and the principal on the bond, only under the following conditions:

(1) The notice of cancellation shall be sent by certified mail, return receipt requested. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the Department, the operator and the principal on the bond as evidenced by return receipts.

(2) Within 60 days after receipt of a notice of cancellation, the operator shall provide the Department with a replacement bond under § 271.361 (relating to replacement of existing bond). If the operator fails to submit a replacement bond acceptable to the Department within the 60-day period, the Department will issue a notice of violation to the operator requiring that the bond be replaced within 30 days of the notice of violation. If the bond is not replaced within that 30-day period, the Department may issue a cessation order for the permits of the operator and related parties, and thereafter take action as may be appropriate.

(3) Failure of the operator to submit a replacement bond within 30 days after the notice of violation constitutes grounds for forfeiture of the bond, and other bonds submitted by the operator, under § 271.351 (relating to forfeiture determination). If the Department declares the bond forfeited before the expiration of the 120-day period, the notice of cancellation is void.

(e) Upon receipt of notice of cancellation by a surety, the Department will notify every municipality in which the facility or part of the facility is located. The Department may provide copies of notices of violation, cease orders and other relevant correspondence regarding the surety cancellation, to the governmental units.

(f) The Department will not accept surety bonds from a surety company when the total bond liability to the Department on bonds filed by the operator, the principal and related parties exceeds the surety company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341—991).

(g) The bond shall provide that the surety and the principal are jointly and severally liable for payment of the bond amount.

(h) The Department will provide in the bond that the amount shall be confessed to judgment and execution upon forfeiture.

(i) The Department will retain, during the term of the bond, and upon forfeiture of the bond, a property interest in the surety's guarantee of payment under the bond which may not be affected by the bankruptcy, insolvency or other financial incapacity of the operator or principal on the bond.

(j) Moneys collected on bonds posted under this subchapter or trusts established under § 271.301 (relating to scope) shall be deposited with the State Treasurer, who will hold the same in the name of the Commonwealth in trust as cash collateral until the Department determines one of the following:

(1) Bonds or trust funds would otherwise be released under § 271.341 (relating to release of bonds).

(2) There are other grounds for forfeiture under § 271.351 or collection under the terms and conditions of the bond or trust.

(3) Other bonds or collateral acceptable to the Department have been posted.

(k) If the bonds are releasable under § 271.341, the moneys shall be returned to the surety or the operator as determined by the Department.

(l) If there are other grounds for forfeiture under § 271.351, or collection under the terms and conditions of the bond or trust, the State Treasurer or the Department will deposit the collected moneys into the Solid Waste Abatement Fund for the purpose specified in § 271.352 (relating to forfeiture procedures). Funds from trusts for municipally operated landfills under § 271.301 shall only be used for closure, abatement, postclosure care, monitoring and other remedial measures necessary for that particular municipally operated landfill.

BOND AND TRUST REQUIREMENTS—AMOUNT

§ 271.332. Bond and trust amount adjustments.

(a) The operator shall submit bond documents required by the Department to increase the total bond liability, and deposit additional bond amounts, upon demand by the Department under § 271.333 (relating to failure to maintain adequate bond), or if additional bond amounts are required under this chapter, including §§ 271.326 and 271.331 (relating to phased deposit of collateral; and bond and trust amount determination).

(b) The Department will require an operator to deposit additional bond or trust corpus amounts when the existing bond or trust corpus does not meet the requirements of this subchapter, including, but not limited to, the following:

(1) Inflationary cost factors have resulted in a new cost estimate which exceeds the estimate used for the original bond amount determination.

(2) The permit is to be renewed or reissued, or is subject to a major permit modification or the bond on deposit is to be replaced.

(3) The Department otherwise determines that the existing total bond liability amount does not meet the purposes of the act, the environmental protection acts, this title, the permit or orders of the Department.

(c) Periodically after the date on which the bond was required to be submitted under this subchapter, the Department may determine the adequacy of bond amount

requirements for municipal waste processing or disposal facilities and, if necessary, require additional bond amounts.

(d) A request for reduction of the required bond will be considered a request for bond release under § 271.341 (relating to release of bonds).

BOND AND TRUST REQUIREMENTS—RELEASE

§ 271.341. Release of bonds.

(a) An operator seeking a termination of a trust for a municipally operated landfill established under § 271.301(c) (relating to scope) or release of a bond previously submitted to the Department shall file a written request with the Department for termination of the trust or for release of all or part of the bond amount posted for the facility as part of a request for bond or trust adjustment under § 271.332 (relating to bond and trust amount adjustments), or after certification of closure of the facility. Requests for trust termination or for withdrawals from trusts for municipally operated landfills established under § 271.301(c) shall comply with the requirements of § 271.343 (relating to withdrawals from municipal trust).

(b) The application for a bond release shall contain the following:

(1) The name of the operator and identification of the facility for which the bond release is sought.

(2) The total amount of bond in effect for the facility and the amount for which release is sought.

(3) A detailed explanation of why the bond release is requested, including, but not limited to, completion of a measure carried out in preparation for closure as defined in the closure plan or otherwise discernible upon inspection of the facility, closure of the facility, completion of postclosure measures, abatement measures taken and amendments to the permit or changes in the facts or assumptions made during the bond amount determination which demonstrate and would authorize a release of part or all of the bond deposited for the facility.

(4) A revised cost estimate for closure and postclosure care under § 271.331 (relating to bond and trust amount determination).

(c) Upon receipt of a written request for bond release under this section, the Department will inspect the facility to verify the accuracy of the information provided in the application for the bond release by the operator, as required by § 271.342 (relating to final closure certification).

(d) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under § 271.331. If the new bond amount determination would require less bond amount for the facility than the amount already on deposit, the Department may release the portion of the bond amount which is not required for the facility, subject to the public notice and comment provisions of this chapter. If the new bond amount determination requires an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(e) A request for a bond release under this section upon final closure, or anytime after final closure, shall be, for the purpose of providing public notice and comment, considered a major permit modification and shall satisfy the public notice and comment requirements for major permit modifications under §§ 271.141—271.143 (relating to public notice by applicant; public notice by Depart-

ment; and public comments) unless waived, in writing, by the Department. The Department may waive the public notice and comment requirement for a particular bond release when a definite schedule of bond release has been set forth in an approved closure plan, a permit or an order of the Department, and the closure plan, permit or order has met the public notice and comment requirements of this chapter.

(f) Upon receipt of a written request for a bond release under this section, the Department will, within 12 months prior to the expiration of the 10-year period following final closure, conduct a final inspection of the facility. The purpose of the inspection is to determine compliance with the act, the environmental protection acts, this title, the terms and conditions of the permit, orders of the Department and the terms and conditions of the bond. Based upon this determination, the Department will either forfeit the bond prior to the expiration of the 10-year period following final closure or release the bond at the expiration of the 10-year period following final closure.

(g) The following apply with regard to bond release:

(1) The Department will not release a bond amount deposited for a facility if the release would reduce the total remaining amount of bond to an amount which would be insufficient for the Department to complete closure and postclosure care, including long term maintenance of remediation measures, and to take measures that are necessary to prevent adverse effects upon the environment or public health, safety or welfare under the act, the environmental protection acts, this title, the terms and conditions of the permits and orders of the Department.

(2) The release of a bond by the Department does not constitute a waiver or release of other liability provided in law, nor does it abridge or alter rights of action or remedies of a person or municipality presently or prospectively existing in equity or under criminal and civil common or statutory law. The release of a bond does not discharge an owner or an operator from liability to restore the groundwater to remediation standards and to maintain groundwater quality, at a minimum, at those levels.

(3) The Department may grant bond releases immediately upon final closure, for facilities other than landfills, if it is clearly demonstrated that further monitoring, restoration or maintenance is not necessary to protect the public health, safety and welfare and the environment.

§ 271.342. Final closure certification.

(a) If the operator of a municipal waste processing or disposal facility believes that closure and postclosure requirements applicable to the facility have been met, the operator may file a request for final closure certification with the Department.

(b) The Department will not issue a final closure certification unless the operator demonstrates that:

(1) The applicable operating requirements of the act, the environmental protection acts, this title, the permit, the approved closure plan and orders of the Department have been complied with.

(2) For a municipal waste landfill permitted on or after December 23, 2000, one of the following remediation standards is met and maintained at and beyond 150 meters of the perimeter of the permitted disposal area or at and beyond the property boundary, whichever is closer:

(i) For constituents for which an MCL has been promulgated under the Federal Safe Drinking Water Act or the Pennsylvania Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-18; and 35 P.S. §§ 721.1—721.17), the MCL for that constituent.

(ii) For constituents for which MCLs have not been promulgated, the background standard for the constituent.

(iii) For constituents for which the background standard is higher than the MCL or alternative groundwater protection standard identified under subparagraph (iv), the background standard.

(iv) For constituents for which MCLs have not been established, an alternative groundwater protection standard that satisfies the following criteria:

(A) The level is derived in a manner consistent with Department guidelines for assessing the health risks of environmental pollutants.

(B) The level is based on scientifically valid studies conducted in accordance with good laboratory practice standards (40 CFR Part 792 (relating to good laboratory practice standards)) promulgated under the Toxic Substances Control Act (15 U.S.C.A. §§ 2601—2692) or other scientifically valid studies approved by the Department.

(C) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the 1×10^{-4} to 1×10^{-6} range.

(D) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this clause, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(3) For a municipal waste landfill that received waste between October 9, 1993, and December 23, 2000, one of the following is met and maintained:

(i) Groundwater remediation standards, including points of compliance, identified in a closure plan approved prior to December 23, 2000.

(ii) Groundwater remediation standards identified in paragraph (2), including the points of compliance.

(4) For other facilities, one of the following groundwater remediation standards is met and maintained at the identified compliance points:

(i) The Statewide health standard at and beyond the property boundary.

(ii) The background standard at each well selected to determine the extent of contamination, as identified in § 273.286(c)(1) (relating to groundwater assessment plan).

(iii) The site-specific standard at and beyond the property boundary.

(5) No further remedial action, maintenance or other activity by the operator is necessary to continue compliance with the act, the environmental protection acts, this title, the permit, the approved closure plan and orders of the Department.

(6) The facility is not causing adverse effects on the environment and it is not causing a nuisance.

(c) For facilities other than municipal waste landfills, the Department may approve a compliance point beyond

the property boundary up to a water source for measuring compliance with secondary contaminants under subsection (b)(4)(i) or (iii).

(d) Upon a request for final closure certification, the Department will inspect the facility to verify that final closure has been completed as provided in subsection (b).

(e) The date of the Department's final closure certification shall be the date of commencement of the 10-year bond liability period following final closure.

(f) The final closure certification is not a guarantee of future performance nor does it constitute a waiver or release of bond liability or other liability existing in law or equity for adverse environmental effects or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the operator remains expressly liable. The issuance of a final closure certification does not discharge an owner or operator from liability to restore the groundwater to remediation standards and to maintain groundwater quality, at a minimum, at those levels.

(g) If after the issuance of a certification of final closure, the Department determines that additional postclosure measures are required to abate or prevent adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the operator setting forth the schedule of measures to be taken to bring the facility into compliance. The measures include, but are not limited to, the applicable requirements of this article.

(h) If, after the issuance of a certification of final closure, the Department determines that the level of risk is increased beyond the acceptable range at a facility due to substantial changes in exposure conditions, such as in a change in land use from a nonresidential to a residential use, or new information is obtained about a substance associated with the facility which revises exposure assumptions beyond the acceptable range, additional remediation shall be required.

(i) For purposes of this section, "property boundary" is the delineation of the parcel of land as described in the deed existing on the date the facility ceases to accept waste.

§ 271.343. Withdrawals from municipal trust.

(a) Except for purposes of investing and reinvesting the moneys in the trust fund by the trustee, no withdrawals may be made from the trust fund prior to certification by the Department of the abandonment of the landfill under § 271.351 (relating to forfeiture determination) or prior to the certification of closure of the landfill under § 273.203(a)(10) (relating to certification). The Department will provide the trustee with a copy of the certification of abandonment.

(b) The trustee shall withdraw and pay over moneys from the trust fund only upon receipt of a written request of the municipality or municipal authority. The trustee may not honor the written request of the municipality or municipal authority unless it has been approved by the Department.

(c) Written requests to the Department to withdraw and pay over moneys from the trust fund to the operator shall include the following:

(1) The name of the operator and the identification of the facility for which withdrawal is sought.

(2) The total amount of the trust corpus for the facility, the amount of the withdrawal request and the balance remaining in the trust.

(3) A detailed explanation of why the withdrawal is requested, including, but not limited to, completion of a stage of postclosure as defined in the closure plan or otherwise discernible upon inspection of the facility, completion of postclosure remedial measures, abatement measures taken and amendments to the permit or changes in the facts or assumptions made during the trust corpus amount determination.

(4) A revised cost estimate for closure and postclosure care under § 271.331 (relating to bond and trust amount determination) based on the costs to complete final closure after the completion of the activities specified in the request as detailed in paragraph (3).

(d) Written requests made of the trustee to withdraw and pay over moneys from the trust fund shall include the following:

(1) The name of the operator and the identification of the facility for which withdrawal is sought.

(2) The total amount of the trust corpus for the facility, the amount of the withdrawal request and the balance remaining in trust.

(3) A copy of the Department's written approval.

(e) When a written request to terminate or withdraw and pay over moneys from the trust fund is received by the trustee or the Department, the recipient shall immediately provide a copy of the request to the municipality in which the landfill is located.

(f) The trustee, immediately on preparation, shall provide a copy of a document effectuating a withdrawal from the trust fund to the Department and to the municipality in which the landfill is located.

(g) The Department will notify the trustee, in writing, of the Department's certification of final closure of the landfill under § 271.342 (relating to final closure certification). Upon receipt of this notification, the trustee shall take the necessary steps to terminate the trust fund. Upon termination of the trust fund, remaining trust property, less final trust administration expenses of the trustee, shall be returned to the settlor municipality or municipal authority.

Subchapter E. CIVIL PENALTIES AND ENFORCEMENT

CIVIL PENALTIES

§ 271.413. Assessment of penalties—minimum penalties.

(a) This section sets forth minimum civil penalties for certain violations of the act and regulations thereunder. The Department will assess a civil penalty under § 271.412 (relating to assessment of penalties—general) only if a civil penalty calculated under § 271.412 is greater in amount than the civil penalty calculated under this section.

(b) If a person or municipality operates a permitted municipal waste landfill on an area for which the person or municipality was not permitted to operate the facility, or in excess of final permitted elevations, the Department will assess a minimum civil penalty of \$5,000 per half acre, or portion thereof. Intermediate acreages will be assessed at the next highest half acre.

(c) If a person or municipality operates a construction/demolition waste landfill on an area for which the person or municipality was not permitted to operate the facility, or in excess of final permitted elevations, the Department will assess a minimum civil penalty of \$500 per half acre,

or a portion thereof. Intermediate acreages will be assessed at the next highest half acre.

(d) If a person or municipality applies sewage sludge to an area for which the person or municipality was not permitted to apply the sludge, the Department will assess a minimum civil penalty of \$1,000 per acre or portion thereof.

(e) If a person or municipality applies sewage sludge under a permit, and the sewage sludge does not meet the physical, chemical or biological quality specified in the permit, the Department may assess a minimum civil penalty of \$1,000 per occurrence.

(f) If a person or municipality transporting residential septage fails to submit the notice to the Department required by § 285.225 (relating to transportation of residential septage), the Department may assess a minimum civil penalty of \$500 for the first offense and a minimum civil penalty of \$1,000 for each subsequent offense.

(g) If a person or municipality fails to provide notification on a timely basis of an incident for which a reporting requirement exists in the act, regulations thereunder, the terms or conditions of a permit or order of the Department, the Department will assess a minimum civil penalty of \$1,000.

(h) If a person or municipality refuses, hinders, obstructs, delays or threatens an agent or employee of the Department in the course of performance of a duty under the act, including, but not limited to, entry and inspection under any circumstances, the Department will assess a minimum civil penalty of \$2,000.

(i) If a person or municipality is applying sewage sludge and has not complied with the training requirements in § 271.915(j) (relating to management practices), the Department may assess a minimum civil penalty of \$1,000.

(j) If a violation is included as a basis for an administrative order requiring cessation of solid waste management operations, or for another abatement order, and if the violation has not been abated within the abatement period set in the order, a minimum civil penalty of at least \$1,000 will be assessed for each day during which the failure continues. Nothing in this subsection limits the Department's authority to assess an appropriate civil penalty for violations that formed the basis for issuing an order, and that occurred prior to the issuance of the order or prior to a date for compliance in the order.

ENFORCEMENT

§ 271.421. Administrative inspections.

(a) The Department and its agents and employees will:

(1) Have access to, and require the production of, books and papers, documents and physical evidence pertinent to a matter under investigation.

(2) Require a person or municipality engaged in the storage, transportation, processing, treatment or disposal of municipal waste to establish and maintain records and make reports and furnish information as the Department may prescribe.

(3) Enter a building, property, premises or place where municipal waste is generated, stored, processed, treated, collected, transported or disposed for the purpose of making an investigation or inspection necessary to ascertain the compliance or noncompliance by the person or municipality with the act and regulations thereunder. In connection with an inspection or investigation, samples may be taken of solid, semisolid, liquid or contained

gaseous material for analysis. If an analysis is made of the samples, a copy of the results of the analysis shall be furnished within 5 business days after receiving the analysis from the laboratory to the person having apparent authority over the building, property, premises or place.

(b) The Department, its employees and agents will conduct routine inspections as follows:

(1) For municipal waste landfills and construction/demolition waste landfills, at least 12 times per year.

(2) For resource recovery facilities, at least 12 times per year.

(3) For transfer facilities, composting facilities and other processing facilities, at least 4 times per year.

(4) For facilities for the utilization of sewage sludge for land reclamation, at least twice per year.

(c) The Department, its employees and agents intend to conduct inspections under the act of:

(1) Facilities for the agricultural utilization of sewage sludge operating under a permit issued under Chapter 275 (relating to land application of sewage sludge) or a beneficial use order issued prior to January 25, 1997, at least 2 times per year.

(2) Municipal waste processing facilities other than resource recovery facilities, which process or incinerate infectious or chemotherapeutic waste, at least 2 times per year.

(3) Municipal waste processing facilities other than resource recovery facilities, which do not process or incinerate infectious or chemotherapeutic waste, at least once per year.

(4) Hospitals where infectious or chemotherapeutic waste is generated, at least 2 times per year.

(5) Locations other than hospitals where infectious or chemotherapeutic waste is generated, at least once per year.

(6) Facilities subject to permit-by-rule under § 271.102 (relating to permit-by-rule for infectious or chemotherapeutic waste processing facilities; general requirements) at least once per year.

(7) Facilities and beneficial use areas subject to permit-by-rule under § 271.103 (relating to permit-by-rule for municipal waste processing facilities other than for infectious or chemotherapeutic waste; qualifying facilities; general requirements), a general permit for beneficial use or processing, or both, under Subchapter I (relating to beneficial use), or a permit for the land application of sewage sludge under Subchapter J (relating to beneficial use of sewage sludge by land application), at least once per year.

(d) The Department, its employees and agents may conduct additional inspections, including follow-up inspections, of municipal waste processing, treatment, disposal, storage, collection and transportation facilities to observe a practice or condition related to public health, safety, welfare or the environment, compliance with the act, the environmental protection acts, this title, the terms or conditions of a permit or a requirement of an order.

(e) The Department, its employees and agents may also conduct inspections of municipal waste processing, treatment, disposal, storage, collection or transportation facilities, if a person or municipality presents information to the Department which gives the Department reason to believe that:

(1) A person or municipality may have engaged in unlawful conduct under the act.

(2) A person or municipality may have violated an environmental protection act.

(3) A condition exists which may pose a threat to public health, safety, welfare or the environment.

Subchapter F. DEMONSTRATION FACILITIES

§ 271.501. Scope.

This subchapter applies to municipal waste processing or disposal facilities, or parts of these facilities, that are based on a new or unique technology for processing or disposing of municipal waste. For purposes of this subchapter, a technology is considered new or unique if it has not previously been demonstrated in this Commonwealth or another comparable area. The Department may approve in writing, as a permit modification, the demonstration of new or unique technology for the processing or disposal of municipal waste at permitted municipal waste processing or disposal facilities if the requirements of this subchapter are met.

§ 271.502. Relationship to other requirements.

(a) An operation that is approved under this subchapter is subject to the requirements of this article.

(b) For an operation that is approved under this subchapter, the Department may waive or modify any application and operating requirements in this article. The Department may not waive or modify Subchapter A, §§ 271.124, 271.125, 271.141 and 271.129, and Subchapter D, E or H.

§ 271.504. Operating requirements.

In addition to applicable operating requirements in this article, a person or municipality that operates a demonstration facility shall comply with the following:

(1) The facility may not be larger than the area needed to adequately test the new or unique technology.

(2) No waste may be processed or disposed at the facility after 2 years from the initial processing or disposal of waste at the facility, unless a different period is stated in the permit. The permittee may request permit renewal under § 271.223 (relating to permit renewal).

(3) The operator shall submit periodic reports to the Department concerning the effectiveness and environmental effect of the facility.

(4) The operator shall immediately cease operations and begin cleanup and removal actions if the Department determines that the facility is causing or is likely to cause harm to public health, safety or welfare or to the environment.

(5) Within 90 days from the expiration of the term of the permit, or within another period approved in the permit, the permittee shall submit to the Department an analysis of the effectiveness of the technology, taking into consideration the factors in § 271.503 (relating to application requirements).

(6) If one of Chapter 273, 275, 277, 279, 281 or 283 is not clearly applicable to the facility, the permittee shall annually submit to the Department a nonrefundable permit administration fee of an amount set forth in the approved permit, but not more than \$1,800, in the form of a check payable to the "Commonwealth of Pennsylvania."

§ 271.505. Public notice of analysis.

The Department will publish in the *Pennsylvania Bulletin* notice of the availability of the analysis submitted

under § 271.504(5) (relating to operating requirements). The notice will request public comment on the analysis and the utility of the analysis in permitting future facilities using the same or similar technology. The Department will also provide written notice of the availability of the analysis to the municipalities in which the facility is located.

Subchapter G. RESIDUAL WASTE; SPECIAL HANDLING WASTE; BENEFICIAL USE OF MUNICIPAL WASTE

ADDITIONAL APPLICATION REQUIREMENTS

§ 271.611. Chemical analysis of waste.

(a) Application form.

(1) Except as provided in subsection (f), an application for the processing or disposal of residual waste or special handling waste, an application for a general permit for the beneficial use or processing of municipal waste under Subchapter I (relating to beneficial use), or an application or registration under § 271.831 (relating to contents of general permits) for inclusion in a general permit issued under Subchapter I, shall contain the following information for each waste on a form provided by the Department:

(i) The name and location of the generator of the waste.

(ii) A detailed analysis that fully characterizes the physical properties and chemical composition of the waste. This analysis shall include available information from material safety data sheets or similar sources that may help characterize the physical properties and chemical composition of the waste.

(iii) An evaluation of the ability of the waste and the constituents in the waste to leach into the environment.

(iv) A determination of whether the waste is hazardous under Chapter 261, Subchapters A—D.

(v) If the waste will be disposed at a municipal waste landfill or construction/demolition waste landfill, a demonstration that the waste meets the requirements for disposal at the facility.

(2) More than one type of waste from a single generator may be included on a single application, if the information required by this section is separately included for each type of waste.

(3) The analysis required by this subsection shall include a waste sampling plan, including quality assurance and quality control procedures. The plan shall ensure an accurate and representative sampling of the waste.

(4) The Department may, in writing, waive or modify the evaluation required by this subsection for waste to be received at permitted facilities if the following conditions are met:

(i) The applicant has submitted a description of the process by which the waste was generated, a physical description of the waste and a certification that the waste is not hazardous.

(ii) The applicant has demonstrated to the Department's satisfaction that additional analysis is not necessary to determine that waste can be received at the facility without adversely affecting the effectiveness of waste processing operations and established emission and wastewater discharge limits.

(iii) The applicant has demonstrated to the Department's satisfaction that additional analysis is not neces-

sary to determine that waste can be received at the facility without adversely affecting the effectiveness of the liner or leachate treatment systems at a landfill, the attenuating soil base at a construction/demolition waste landfill or established emission and wastewater discharge limits.

(b) *Waste generation.* Except as provided in subsection (e), an application shall also include a description of the waste generation process, including a description of the raw materials used in the process, the primary chemical reactions which occur during the process, the sequence of events which occur during the process, the points of waste generation in the process and the manner in which each of the wastes is managed subsequent to its generation. A schematic drawing of the process shall be included.

(c) *Methodologies.* The analytical methodologies used to meet the requirements of subsection (a) shall be those in the most recent edition of the EPA's "Test Methods for Evaluating Solid Waste" (SW-846), "Methods for Chemical Analysis of Water and Wastes" (EPA 600/4-79-020), "Standard Methods for Examination of Water and Wastewater," prepared and published jointly by the American Public Health Association, American Waterworks Association, and Water Pollution Control Federation or a comparable method subsequently approved by the EPA or the Department.

(d) *Quality control.* The person taking the samples and the laboratory performing the analysis required by subsection (a) shall employ the quality assurance/quality control procedures described in the EPA's "Handbook for Analytical Quality Control in Water and Wastewater Laboratories" (EPA 600/4-79-019) or "Test Methods for Evaluating Solid Waste" (SW-846). The laboratory's quality control procedures, as well as the documentation of the use of those procedures, shall be included in the application unless waived by the Department.

(e) *Generator information.* An applicant may submit information received from a person or municipality under § 287.54 (relating to chemical analysis of waste) to meet the corresponding requirements of this section.

(f) *Waiver.* The Department may, in writing, waive the requirements of this section for special handling waste, waive or modify the requirements of this section for general permits issued under Subchapter I and waive or modify the chemical analysis requirements under § 271.103 (relating to permit-by-rule for municipal waste processing facilities other than for infectious or chemotherapeutic waste; qualifying facilities; general requirements).

§ 271.612. Source reduction strategy.

An application for the processing or disposal of residual waste shall contain a copy of the source reduction strategy required by § 287.53 (relating to source reduction strategy) for each residual waste to be received at the facility.

§ 271.613. Waste analysis plan.

(a) The application shall include a waste analysis plan for each type of waste proposed to be received at the permitted facility. The plan shall take into account the waste analysis required by § 271.611 (relating to chemical analysis of waste). The plan shall include:

(1) The parameters for which each residual waste will be analyzed and the rationale for the selection of these parameters.

(2) The test methods that will be used to test for these parameters. The test methods shall be the same as those used under § 271.611.

(3) An explanation of the sampling methods that will be used to obtain an accurate and representative sample of the waste to be analyzed, including quality assurance and quality control procedures.

(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date. The rationale for the frequency shall also be explained.

(b) The application shall also include a plan for screening and managing incoming waste to ensure that the management of the waste is consistent with the permit and this article. Except as otherwise required by the Department, the application shall include at a minimum a plan for checking each load of waste received at the facility for color, odor, texture, physical state and phases of waste.

(c) The application shall describe how rejected waste will be managed, including responsible persons or municipalities and the method by which an alternative processing or disposal facility will be selected.

Subchapter H. GENERAL PERMITS—INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

§ 271.711. (Reserved).

§ 271.712. (Reserved).

§ 271.721. (Reserved).

§ 271.722. (Reserved).

§ 271.723. (Reserved).

§ 271.724. (Reserved).

§ 271.725. (Reserved).

§ 271.731. (Reserved).

§ 271.732. (Reserved).

§ 271.741. (Reserved).

§ 271.742. (Reserved).

§ 271.743. (Reserved).

§ 271.744. (Reserved).

Subchapter I. BENEFICIAL USE SCOPE

§ 271.801. Scope.

(a) This subchapter sets forth requirements for general permits for the processing and beneficial use of municipal waste, except as follows:

(1) This subchapter does not set forth requirements for general permits for the processing or beneficial use of infectious or chemotherapeutic waste.

(2) This subchapter does not set forth requirements for general permits for the beneficial use of sewage sludge by land application, except as provided in § 271.821(b)(6) (relating to application for general permit). A general or individual permit for the beneficial use of sewage sludge not mixed with residual waste will be issued only under Subchapter J (relating to beneficial use of sewage sludge by land application).

(b) An operation that is approved under this subchapter does not require an individual processing or disposal permit under this article. The requirements of Chapter 271, Subchapters A—G, and Chapters 273, 277, 279, 281, 283 and 285 are applicable to the extent required in § 271.832 (relating to waiver and modification of requirements).

**GENERAL PERMIT FOR PROCESSING OR
BENEFICIAL USE, OR BOTH, OF MUNICIPAL
WASTE; AUTHORIZATION AND LIMITATIONS**

§ 271.811. Authorization for general permit.

(a) Under §§ 271.812 and 271.821—271.825, the Department may issue general permits on a regional or Statewide basis for a category of processing when processing is necessary to prepare the waste for beneficial use, or for a category of beneficial use, or both, of municipal waste, if the following are met:

(1) The wastes included in the category are generated by the same or substantially similar operations and have the same or substantially similar physical character and chemical composition. If wastes are not the same or substantially similar and are blended for use, the blend shall be consistently reproduced with the same physical character and chemical composition.

(2) The wastes included in the category are proposed for the same or substantially similar beneficial use or processing operations.

(3) The activities in the category can be adequately regulated utilizing standardized conditions without harming or presenting a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth. The Department will not issue a general permit if the use of the waste as an ingredient in an industrial process or as a substitute for a commercial product presents a greater harm or threat of harm than the use of the produce or ingredient which the waste is replacing.

(b) The Department may issue a general permit upon its own motion under § 271.825 (relating to Department initiated general permits) or upon an application from a person or municipality under §§ 271.821—271.824.

(c) The Department may modify, suspend, revoke, issue or reissue a general permit or coverage under a general permit under this subchapter as it deems necessary to prevent harm or the threat of harm to the health, safety or welfare of the people or environment of this Commonwealth.

(d) The Department may modify, suspend, revoke, issue or reissue a general permit or coverage under a general permit under this subchapter as it deems necessary to prevent violation of or interference with the laws or solid waste management plans of any state, county or municipality.

(e) The Department may issue a general permit for processing combinations of municipal and residual wastes when processing is necessary to prepare a waste for beneficial use, or for beneficial use of combinations of municipal and residual wastes, or both, under this article or Article IX (relating to residual waste management), whichever the Department determines is appropriate. The Department will determine which article is appropriate based on factors including whether the facility is captive or noncaptive, and the proportions of municipal and residual wastes. A general permit for processing or beneficial use of combinations of sewage sludge and residual waste will be issued only under this subchapter.

(f) The requirements in this subchapter that apply to municipal waste also apply to residual waste when residual waste is mixed with municipal waste.

(g) The Department will not issue a general permit under this subchapter for the following:

(1) A municipal waste landfill, the use of municipal waste to fill open pits from coal or noncoal mining, or the

use of municipal waste solely to level an area or bring the area to grade unless construction activity is completed on the area promptly after placement of the waste.

(2) A facility or activity which should be covered under the individual permitting process required in this article because of its size and potential to affect the environment adversely or because of its relationship to municipal waste management plans.

(3) The processing or beneficial use of infectious or chemotherapeutic waste.

(4) The beneficial use of sewage sludge by land application for sewage sludge that is not mixed with residual waste.

(5) The use of a waste for construction or operations at a resource recovery facility or disposal facility.

ISSUANCE OF GENERAL PERMITS

§ 271.821. Application for general permit.

(a) A person or municipality may apply to the Department for the issuance of a general permit for a category of beneficial use of municipal waste or for a category of processing of municipal waste when processing is necessary to prepare the waste for beneficial use.

(b) An application for the issuance of a general permit shall be submitted on a form prepared by the Department and shall contain the following:

(1) A description of the waste to be covered by the general permit, including the physical and chemical characteristics of the waste. The chemical description shall contain an analysis meeting the requirements of § 271.611 (relating to chemical analysis of waste) for a sufficient number of samples of the waste to represent accurately the range of physical properties and chemical characteristics of the waste.

(2) A description of the proposed type of beneficial use or processing activity to be covered by the general permit.

(3) For beneficial use general permits, proposed concentration limits for contaminants in the waste which is to be beneficially used, and a rationale for those limits.

(4) For general permits that involve beneficial use of a processed or unprocessed waste, a detailed demonstration of the efficacy of the waste for the proposed beneficial use, which shall include:

(i) If the waste is to be used as a substitute for a commercial product, a demonstration that the waste is capable of performing the desired functions of the commercial product, and that the waste meets or exceeds applicable ASTM, Department of Transportation or other applicable National, State, local or industry standards or specifications for the material for which the waste is being substituted.

(ii) If the waste is to be used as a raw material for a product with commercial value, a demonstration that the waste will contribute significant properties or materials to the end product, and that the waste meets or exceeds applicable ASTM, Department of Transportation or other applicable National, State, local or industry standards or specifications for the material for which the waste is being substituted.

(iii) If the waste is to be used in general roadway application or highway construction, a demonstration that approval has been granted by the Department of Transportation Product Evaluation Board, if applicable, for the use of the waste for the intended application.

(iv) If the waste is to be used as a construction material, soil substitute, soil additive or antiskid material, or is to be otherwise placed directly onto the land, an evaluation of the potential for adverse public health and environmental impacts from the proposed use of the municipal waste. The evaluation shall identify the particular constituents of the waste which present the potential for adverse public health and environmental impacts, and the potential pathways of human exposure to those constituents, including exposure through groundwater, surface water, air and the food chain. This requirement does not apply to general permits for the land application of sewage sludge. The Department may waive or modify this requirement in writing.

(v) If the waste is to be used without reclamation as a construction material, soil additive, soil substitute or antiskid material or is to be otherwise placed directly onto the land, a demonstration that the leaching analysis of the municipal waste to be beneficially used is no greater than 25 times the primary maximum contaminant level (MCL) for metals and other cations and the primary MCL for contaminants other than metals and cations.

(5) If wastes are blended for use, a demonstration that each waste results in a beneficial contribution to the use of the mixed waste and that the consistency of the blend will be maintained. The applicant shall specify the quantities and proportions of all materials included in the blended waste and the mixture shall meet appropriate standards for use.

(6) For a mixture of sewage sludge and residual waste, a demonstration that the following requirements are met in addition to the other requirements of this subchapter:

(i) The person who prepares the sewage sludge has one of the following:

(A) A permit for operation of the facility issued by the Department under the procedures and requirements of Chapter 91 or 92 (relating to general provisions; and National Pollutant Discharge Elimination System) or this chapter, as applicable.

(B) A permit for operation of the facility in which the sewage sludge is prepared, that is issued or modified by the State in which the facility is located or by the EPA, from which the Department may determine that the sewage sludge and residual waste mixture to be land applied will meet the standards in 40 CFR Part 503 (relating to standards for the use or disposal of sewage sludge).

(ii) The requirements of the following sections are met: §§ 271.902(g), 271.904—271.911, 271.913—271.919 and 271.931—271.933.

(c) Except as provided in subsection (d), an application for the issuance of a general permit under this subchapter shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$1,000.

(d) An application for issuance of a general permit that involves the mixture of residual waste and municipal waste under this subchapter shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$2,000.

(e) The Department may not waive bonding and insurance requirements in Subchapter D (relating to financial assurances requirements) for composting facilities, construction/demolition waste processing facilities, facilities that process municipal waste to produce refuse

derived fuel and for other general permit activities if the waste managed is potentially harmful or large quantities of waste are stored.

(f) An applicant for a general permit shall provide written notice to each municipality in which the applicant intends to operate under a general permit, if a location is known. Proof of this notice, including a copy of the notice and certified or registered mail returned receipt, shall be submitted to the Department.

§ 271.832. Waiver and modification of requirements.

(a) An operation that is approved under this subchapter is subject to this article.

(b) For an operation that is approved under this subchapter, the Department may waive or modify any application and operating requirements in this article, except the Department may not waive § 271.123 and may not waive or modify Subchapter A, §§ 271.124, 271.125 and 271.129, Subchapter D in accordance with § 271.821(d) or Subchapter E.

Subchapter J. BENEFICIAL USE OF SEWAGE SLUDGE BY LAND APPLICATION

OPERATING REQUIREMENTS

§ 271.915. Management practices.

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(h) A person that operates under an individual or general land application of sewage sludge permit issued under this subchapter shall comply with the EPA and the Department guidance documents on the land application of sewage sludge pertaining to conducting sampling and analyses, and calculating the agronomic rate and the cumulative pollutant loading rate.

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CHAPTER 272. MUNICIPAL WASTE PLANNING, RECYCLING AND WASTE REDUCTION

Subchapter A. GENERAL

§ 272.1. Scope.

This chapter sets forth rights and responsibilities for host counties which have municipal waste facilities within their boundaries, and requirements for municipalities and counties for municipal waste planning, recycling and waste reduction. The requirements in this chapter are in addition to the applicable requirements in Chapter 271 (relating to municipal waste management—general provisions).

Subchapter B. HOST COUNTIES

§ 272.101. County withdrawals from trust fund.

The trustee of a site-specific postclosure trust established under section 1108 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. § 4000.1108) may release moneys from the trust to the county which established the trust upon written request from the county to the trustee in accordance with the Environmental Stewardship and Watershed Protection Act.

§ 272.102. Trust requirements.

(a) A trust fund established under section 1108 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. § 4000.1108) shall meet the following requirements:

(1) The trustee shall be a state-chartered or National bank, or financial institution with trust powers or trust company with offices in this Commonwealth and whose

trust activities are examined or regulated by a state or Federal agency. The trustee shall have an office located in the county establishing the trust fund.

(i) The trustee may resign by sending written notice to the Department, the county and the operator of the municipal waste landfill, by certified mail, return receipt requested, of its intention to resign. The resignation may not take effect until the following conditions have been met:

(A) The expiration of a 120-day period after the trustee has provided written notice of its intention to resign.

(B) The county has appointed a successor trustee and the successor trustee accepts the appointment.

(ii) If the county fails to appoint a successor trustee or a successor trustee fails to accept the appointment at the expiration of the 120-day period, the trustee may apply to a court of competent jurisdiction for instructions.

(2) The trust shall provide that the operator of the municipal waste landfill and the Department are co-beneficiaries under the trust. The trust may not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, other legal process or to the claims of creditors.

(3) The trust shall be irrevocable.

(4) The corpus of the trust fund shall consist of moneys paid by the operator of the municipal waste landfill for waste received at the landfill until January 1, 2000, under former section 1108(c) of the Municipal Waste Planning, Recycling and Waste Reduction Act. The payments are computed on the basis of 25¢ per ton, or part thereof, of weighed waste or 25¢ per 3 cubic yards, or part thereof, of measured waste for solid waste received at the landfill for the quarter for which payment was due to be made.

(5) The trustee shall send the Department, in writing on a quarterly basis, a statement of the trust account transactions.

(b) The trustee is authorized to invest and reinvest the principal and income of the trust fund and keep the fund invested as a single fund, without distinction between principal and income. In investing, reinvesting and otherwise managing the trust fund, the trustee shall discharge its duties solely in the interest of the beneficiaries. The trustee shall manage the trust fund with that degree of judgement, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence, who are familiar with these matters, exercise in the management of their own affairs not in regard to speculation, but in regard to the permanent disposition of the funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

* * * * *

(e) The trustee is authorized to hold cash awaiting investment or distribution for a reasonable period of time without liability for the payment of interest thereon.

(f) The trustee shall annually, at least 30 days prior to the anniversary date of the establishment of the trust fund, furnish to the operator, the county and the Department a statement confirming the value of the trust fund, and the dates and amounts of any payments into the trust from the landfill and withdrawals for administration or a purpose other than investment or reinvestment. The trustee shall value securities in the trust fund at the lesser of market or par value as of no more than 60 days prior to the anniversary date.

§ 272.103. Failure to make payment.

Under § 272.102(a)(5) (relating to trust requirements), if the trustee notifies the Department that a payment due from the operator of the municipal waste landfill has not been received by the trustee, the Department will immediately, in writing, notify the operator that it shall pay to the trustee the payment due within 15 days of the Department's notification. If the operator fails or refuses to pay to the trustee the payment at the expiration of the 15-day period, the Department will proceed or the trustee may proceed to collect the payment in a manner provided by law.

§ 272.104. Operator withdrawals from trust fund.

(a) Withdrawals by the operator may not be made from the trust fund prior to certification by the Department of the closure of the landfill under § 273.203(d) (relating to certification). The Department will provide the trustee with a copy of the certification of closure.

(b) The trustee shall withdraw and pay over moneys from the trust fund to the operator only upon receipt of a written request of the operator. The trustee may not honor the written request of an operator unless the request has been approved by the Department. A payment from the trust to the operator may only be made for remedial measures and emergency actions required by the Department for prevention or abatement of adverse effects on the environment.

(c) Written requests by the operator to the Department for approval of withdrawal of moneys from the trust shall include the following:

(1) The name of the operator and the identification of the facility for which withdrawal is sought.

(2) The date of closure of the facility.

(3) The closure plan for the facility under § 271.113 or § 273.192 (relating to closure plan; and closure plan), or the date the closure plan was previously submitted to the Department or approved by the Department.

(4) The total amount of the trust corpus, the amount of the withdrawal request and the amount that will remain in trust.

(5) A revised cost estimate for closure and postclosure care under § 271.331 (relating to bond and trust amount determination).

(6) A demonstration that the operator has inadequate financial resources to perform the remedial measures or emergency actions for which it is requesting the withdrawal and that the bond issued under the act has been exhausted.

(d) Written requests made by the operator to the trustee to withdraw and pay over moneys from the trust fund shall include the following:

(1) The amount requested to be withdrawn.

(2) The purpose of the withdrawal.

(3) A copy of the Department's written approval.

(e) When the operator makes a request to the Department for approval of a withdrawal from the trust, the operator shall immediately provide a copy of the request to the county and to the municipality in which the landfill is located. When a written request to withdraw and pay over moneys from the trust fund is received by the trustee, the trustee shall immediately provide a copy of the request to the county and to the municipality in which the landfill is located.

(f) After the trustee receives notification of certification of closure from the Department, the trustee shall release moneys from a trust for a municipal waste landfill that operated prior to April 9, 1988, and closed shortly thereafter, if the landfill has no closure bond or a closure bond of less than \$10,000 and has not been abandoned for the following postclosure activities, upon written request by the landfill operator and written approval by the Department:

- (1) Placement of wells for water quality monitoring.
- (2) Placement of gas control devices for gas monitoring.
- (3) Placement of leachate collection and treatment system.
- (4) Erosion and sedimentation control.
- (5) Revegetation and regrading including maintenance of final cover.
- (6) Access control.
- (7) Other postclosure activities.

(g) The trustee, immediately on preparation, shall provide a copy of a document effectuating a withdrawal from the trust fund by the operator to the county, the municipality in which the landfill is located and the Department.

§ 272.105. County withdrawals from the trust fund for administering the trust fund.

(a) The county may request the trustee to withdraw and pay over to the county moneys as may be necessary to reimburse the county for actual costs incurred by the county in administering the trust fund. The county shall provide documentation necessary to satisfy the trustee that the county's request accurately sets forth the actual costs incurred by the county.

(b) Payments to the county for costs incurred in administering the trust fund may not exceed the lesser of the county's actual costs, or 0.5% of the moneys in the trust fund (including the trust corpus, earnings and profits) on the date of the county's request for payment.

(c) After the trustee receives a copy of certification of closure from the Department, payments to the county for costs incurred in administering the trust may not exceed the lowest of the county's actual costs, 0.5% of the moneys in the trust fund (including the trust corpus, earnings and profits) or the earnings and profits from the trust corpus credited during the billing period.

§ 272.106. Termination of trust.

(a) The Department will notify the trustee, in writing, of the Department's certification of final closure of the landfill under § 271.342 (relating to final closure certification) and one of the following:

- (1) The release of the bond.
- (2) The termination of a trust provided for a landfill operated by a municipality solely for municipal waste not classified hazardous, if the municipality has provided the trust in lieu of a bond under § 271.301(c) (relating to scope).

(b) Upon receipt of the notification required in subsection (a), the trustee shall take the necessary steps to terminate the trust.

(c) Upon termination of the trust fund, the remaining trust property, less final trust administration expenses of the trustee, shall be given to the county that established

the trust for use in a manner consistent with the Environmental Stewardship and Watershed Protection Act.

(d) A trustee may take the necessary steps to terminate a trust at any time prior to the time stated in subsection (a) if all of the moneys have been withdrawn and paid out in accordance with this subchapter.

Subchapter C. MUNICIPAL WASTE PLANNING

PLANNING

§ 272.211. General requirement.

A county shall submit to the Department a municipal waste plan revision under this subchapter. For purposes of this subchapter, the term "county" includes cities of the first class, but does not include counties of the first class.

PLAN CONTENT

§ 272.221. Scope of plan.

(a) Except as provided in § 272.211 (relating to general requirement), a plan submitted after October 26, 1988, shall comply with this subchapter.

(b) The Department may, in writing, request information from a county not specifically identified in this subchapter that the Department deems necessary to implement the purposes and provisions of the Municipal Waste Planning, Recycling and Waste Reduction Act and this subchapter.

§ 272.223. Description of waste.

(a) The plan shall describe and explain the origin, content and weight or volume of municipal waste currently generated within the county's boundaries, and the origin, content and weight or volume of municipal waste that will be generated within the county's boundaries during the next 10 years. The plan shall also include a statement of the county or other geographical area for which the plan is prepared.

(b) In describing the content of waste, the plan shall specifically address sewage sludge (including septage), infectious and chemotherapeutic waste, ash from resource recovery facilities, construction/demolition waste other than waste from demolition of an industrial site and other municipal waste.

(c) In describing the origin of waste, the plan shall provide:

(1) An estimate of the number of residential, commercial, municipal and institutional establishments, and community activities within the county, for municipal waste other than the special handling wastes specifically addressed in this subsection.

(2) An inventory of public and private sewage treatment plants, including mobile homes, restaurants and hotels, and an inventory of septage haulers serving the county, for sewage sludge (including septage).

(3) An inventory of hospitals in the county, and a representative sampling of different medical specialists, such as clinics, doctors, dentists, funeral directors and veterinarians, for infectious and chemotherapeutic waste.

(4) An inventory of the facilities serving the county, for ash from resource recovery facilities.

(5) An estimate of the amount of construction/demolition waste currently generated within the county's boundaries and that will be generated within the county's boundaries during the next 10 years; and an estimate of

the amount of construction/demolition waste that is currently recycled and that could be recycled during the next 10 years.

(d) In describing the weight or volume of waste, the plan shall provide:

(1) A total waste generation estimate for the planning area derived from best available National studies, sampling data from similar counties or other reliable information, for municipal waste other than special handling waste described in subsection (c).

(2) Sampling or survey data for the planning area, or other reliable information, for the special handling waste described in subsection (c).

(3) A detailed analysis, for each type of waste, of the extent to which recycling currently reduces the weight or volume of waste that requires processing or disposal, and the extent to which waste reduction or recycling will reduce the weight or volume of waste that will require processing or disposal within the next 10 years. If less than 35% of the weight or volume of waste will be recycled or reduced, the plan shall contain a detailed justification.

(e) The plan may also, at the discretion of the county, specifically address one or more of the following:

- (1) Waste tires.
- (2) Household hazardous waste.
- (3) Leaf waste, yard waste and other waste suitable for composting.
- (4) Bulk items from community cleanup days.
- (5) Other components of municipal waste not described in this section.

§ 272.224. Description of facilities.

(a) The plan shall identify and describe the following:

(1) The facilities where the county's municipal waste is currently being disposed or processed.

* * * * *

(4) The recycling capabilities of the facilities.

* * * * *

(d) For purposes of this section, an "existing facility" is a municipal waste processing or disposal facility which meets either of the following conditions:

(1) The facility was designated to receive waste in the existing county plan.

(2) The facility has submitted a complete permit application as of the date of the notice of plan revision.

(e) A facility will not be considered an "existing facility" under subsection (d) if it meets one or more of the following:

(1) Its status as an existing facility depends wholly or partly on the filing of a permit application, and the application is denied by the Department.

(2) Its status as an existing facility depends wholly or partly on the holding of a permit under the act, and the permit is revoked or suspended, or the Department requires the facility to cease receiving waste, based on violations of the act, the environmental protection acts, regulations thereunder, the terms or conditions of its permit, or an order issued by the Department.

(f) In developing its plan under this subchapter, a county may consider a proposed or operating municipal waste processing or disposal facility that is not described in this section.

§ 272.225. Estimated future capacity.

(a) The plan shall estimate the processing or disposal capacity needed for the municipal waste that will be generated in the county during the next 10 years. This estimate shall be based on the analysis performed under § 272.223 (relating to description of waste), and may not include waste or source separated recyclable material that will be recycled.

(b) The plan shall describe the primary variables affecting this estimate and the extent to which they can reasonably be expected to affect the estimate, including, but not limited to, the amount of residual waste disposed or processed at municipal waste disposal or processing facilities in the county and the extent to which residual waste may be disposed or processed at these facilities during the next 10 years.

(c) The plan shall consider the impact of compliance with the regulations of the Department relating to residual waste in determining the estimate.

(d) If during the development of a plan revision, the county determines that additional processing or disposal capacity is needed by the county, the county shall give public notice of the determination and solicit proposals and recommendations regarding facilities and programs to provide the capacity. The county shall provide a copy of the notice to the Department, which will submit a copy of the notice to be published in the *Pennsylvania Bulletin*.

§ 272.226. Description of recyclable materials.

(a) The plan shall describe and evaluate:

(1) The kind and weight or volume of materials that could be recycled, giving consideration, at a minimum, to the following materials: clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper, plastics, other marketable grades of paper and leaf waste.

(2) Potential benefits of waste reduction or recycling, including the potential solid waste reduction and the avoided cost of municipal waste processing or disposal.

(3) Existing materials recovery operations and the kind and weight or volume of materials recycled by the operations, whether public or private.

(4) The compatibility of recycling with other municipal waste processing or disposal methods, giving consideration to and describing anticipated and available markets for materials collected through municipal recycling programs.

(5) Proposed or existing collection methods for recyclable materials.

(6) Options for ensuring the collection of recyclable materials.

(7) Options for the processing, storage and sale of recyclable materials, including market commitments.

(8) Options for municipal cooperation or agreement for the collection, processing and sale of recyclable materials.

(9) A schedule for implementation of the recycling program for mandated municipalities and other parts of the county.

(10) Estimated costs of operating and maintaining a waste reduction and recycling program, estimated rev-

enue from the sale or use of materials and avoided costs of processing or disposal. This estimate shall be based on a comparison of public and private operation of some or all parts of the recycling program.

(11) What consideration for the collection, marketing and disposition of recyclable materials will be accorded to persons engaged in the business of recycling on the date that the county issued its notice of plan revision under § 272.203 (relating to notice of municipalities) whether or not the persons are operating for profit.

(12) A public information and education program that will provide comprehensive and sustained public notice of waste reduction and recycling program features and requirements.

(b) A county containing municipalities that are required by Subchapter E (relating to municipal recycling programs) to implement recycling programs shall take the provisions of that subchapter into account in preparing the recycling portion of its plan. For these counties, the plan shall:

(1) Identify the municipalities that have mandatory or voluntary recycling programs.

(2) Identify municipalities that have delegated to the county their responsibilities under Subchapter E.

(3) Explain how recycling under the plan will be coordinated with, and will not interfere with, municipal recycling under Subchapter E.

(c) Nothing in this subchapter prohibits the preparation of a county municipal waste management plan revision prior to developing and implementing a recycling program required by Subchapter E, nor does this subchapter prohibit the preparation or implementation of a municipal recycling or waste reduction plan prior to the approval of the county plan revision.

§ 272.227. Selection and justification of municipal waste management program.

(a) The selection and justification of the municipal waste management program, as required by this section, is the most important part of the plan. The plan shall explain in detail how alternatives were identified and evaluated, the advantages and disadvantages of each alternative and how each facility or program was selected. The plan shall explain in detail the role of the advisory committee in this process.

(b) The plan shall describe the type, mix, size, expected cost and proposed methods of financing the facilities, recycling programs or waste reduction programs that are proposed for the processing and disposal of the municipal waste or source separated recyclable materials that will be generated within the county's boundaries during the next 10 years.

(c) For every proposed facility, recycling program or waste reduction program, the plan shall:

(1) Explain in detail the reason for selecting the facility or program.

(2) Describe alternative facilities or programs, including, but not limited to, waste reduction, recycling or resource recovery facilities, municipal waste landfills, or other programs, that were considered. The plan shall provide reasonable assurances that the county utilized a fair, open and competitive process for selecting the facilities or programs from among alternatives which were suggested to the county. Nothing in this section requires the county to utilize a request for proposals or a bidding

process to identify or select alternatives, nor does it require a county to select the alternative with the lowest cost.

(3) Evaluate the environmental, energy, life cycle cost and costs of transportation to each facility considered, and the economic advantages and disadvantages of the proposed facility or program as well as the alternatives considered.

(4) Show that adequate provision for existing and reasonably anticipated future recycling has been made in designing the size of a proposed facility. The plan shall explain whether put-or-pay contracts will be used to guarantee waste to a particular facility. If put-or-pay contracts are proposed, the plan shall explain in detail how use of the contracts will not interfere with or inhibit recycling in the county.

(5) Set forth a time schedule and program, by month and year, for planning, design, siting, construction and operation of each proposed facility or program.

(d) A landfill or resource recovery facility selected by a county for capacity assurance shall be considered "provided for" in that county's plan under section 507 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.507).

§ 272.228. Location.

The plan shall identify the location of each municipal waste processing or disposal facility and each recycling program identified in § 272.227 (relating to selection and justification of municipal waste management program). For a site not yet chosen, the plan shall explain how the site will be chosen.

§ 272.233. Facilities developed pursuant to sub-county plans.

The plan shall explain how it will not interfere with the design, construction, operation, financing or contractual obligations of a municipal processing or disposal facility, including a reasonable expansion of an existing facility, which is part of a complete municipal waste management plan submitted to the Department by a municipality or organization of municipalities under the act prior to September 26, 1988, and approved by the Department.

PLAN REVIEW PROCEDURES

§ 272.244. Departmental review of plans.

(a) Within 30 days after receiving a complete plan revision, including a plan revision submitted under § 272.243(d) (relating to failure to ratify plan), the Department will approve, conditionally approve or disapprove it. If the Department gives written notice to the county that additional time is necessary to complete its review, the Department will have 30 additional days to render a decision. A nonsubstantial plan revision will be deemed approved within 30 days of receipt by the Department, unless the Department responds in writing.

(b) The Department will approve a county plan that demonstrates to the satisfaction of the Department that:

(1) The plan is complete and accurate and consistent with the Municipal Waste Planning, Recycling and Waste Reduction Act and regulations thereunder.

(2) The plan provides for the maximum feasible development and implementation of waste reduction and recycling programs.

(3) The plan provides for the processing and disposal of municipal waste in a manner that is consistent with the

requirements of the act, the Municipal Waste Planning, Recycling and Waste Reduction Act and regulations thereunder.

(4) The plan provides for the processing and disposal of municipal waste for at least 10 years.

(5) If the plan proposes that municipal waste generated within the county's boundaries to be required, by means other than contracts, to be processed or disposed at a designated facility under § 272.231(c) (relating to implementing documents), the plan explains the basis for doing so.

(6) If the plan proposes that the county own or operate a municipal waste processing or disposal facility, the plan explains the basis for doing so.

(c) A plan approved by the Department will, at a minimum, ensure and contain the following conditions:

(1) The county shall implement the plan that was submitted to the Department in accordance with the provisions of the plan and conditions contained in a conditional approval.

(2) The county shall adhere to the schedule in the approved plan for planning, designing, siting, construction or operation of municipal waste processing or disposal facilities, and waste reduction or recycling facilities or programs.

(3) The county may not act in a manner contrary to the approved plan or otherwise fail to act in a manner consistent with the approved plan.

(d) The Department will publish notice of plan approval under this section in the *Pennsylvania Bulletin*.

§ 272.245. Submission of implementing documents.

(a) Within 1 year following approval of a plan by the Department, the county shall submit to the Department copies of executed ordinances, contracts or other requirements to implement its approved plan and that will be used to ensure sufficient available capacity to properly dispose or process municipal waste that is expected to be generated within the county for the next 10 years.

(b) The ordinances, contracts or other requirements shall be the same in form and content as those submitted under § 272.231 (relating to implementing documents), except that the documents submitted under this section shall be executed, enacted or otherwise in full force and effect.

(c) Within 30 days after receipt, the Department will notify the county in writing if the documents do not adequately implement the approval plan. After the expiration of the 30-day review period, the Department will not issue a municipal waste landfill or resource recovery facility permit under the act unless the facility meets the requirements of § 271.201 (relating to criteria for permit issuance or denial). This subsection does not affect the Department's ability to issue or deny permits under § 271.201.

PLAN REVISIONS

§ 272.251. Submission of revisions.

(a) A county with an approved municipal waste management plan shall submit a revised plan to the Department in accordance with this subchapter at the earliest of the following events:

(1) At least 3 years prior to the expiration of the capacity assurances necessary to dispose or process the municipal waste generated in the county.

(2) At least 3 years prior to the expiration of the term of the county's approved plan.

(3) When otherwise required by the Department.

(b) A county with an approved municipal waste management plan may submit a revised plan to the Department in accordance with this subchapter at any other time.

(c) A proposed plan revision will be reviewed by the Department under the criteria in § 272.244 (relating to Departmental review of plans) to the extent that the plan is affected by the proposed revision.

§ 272.252. Development of plan revisions.

(a) A county shall provide written notice to the Department when plan revision development begins. The notice shall describe the proposed plan revisions the county intends to undertake, including a description of how capacity will be assured for the remainder of the planning period.

(b) Within 30 days after receipt of written notice submitted under subsection (a), the Department will notify the county if it determines the proposed revision is substantial.

(c) A county submitting a plan revision shall comply with:

(1) Sections 272.221—272.233 (relating to plan content), to the extent changes from the approved plan are proposed.

(2) Sections 272.201, 272.202 and 272.204 (relating to purposes; advisory committee; and format of plans).

(3) Section 272.203 (relating to notice to municipalities). At least 30 days before submitting a proposed, nonsubstantial plan revision to the Department, the county shall submit a copy of the proposed revision to the advisory committee and each municipality within the county. A summary of comments received from the advisory committee and municipalities shall be included with the submission of a nonsubstantial revision to the Department.

(d) If the plan revision is determined to be substantial, the county shall also:

(1) Comply with §§ 272.202, 272.241—272.243 and 272.245.

(2) Identify and describe the facilities where municipal waste is currently being disposed or processed, and the remaining available permitted capacity of the facilities. The plan revision shall also consider the capacity which could be made available through the reasonable expansion of the facilities.

(e) For purposes of this section, substantial plan revisions shall include, but not be limited to:

(1) The elimination of a recycling program, contained in a county plan and operating in a county resulting in reduced volume of recycling.

(2) The addition of municipal waste streams not originally included in the plan.

(f) A county may choose to use the substantial revision process even if the Department determines that a plan revision is nonsubstantial.

OTHER PLANNING PROVISIONS

§ 272.261. Annual report by county.

(a) On or before April 1 of each year, a county shall submit a report to the Department.

(b) The annual report, which shall be submitted on a form supplied by the Department, shall include the following:

(1) If the county is developing a plan, a detailed description of its progress in developing the plan, showing which requirements of this subchapter have already been met, and which plan elements have been completed. The county shall also include a schedule for completion of the remaining tasks in accordance with the deadlines and requirements of this subchapter.

(2) If the county is implementing an approved plan, a detailed description of its progress in implementing the plan, showing the county's progress in carrying out the implementation schedule in the plan. The county shall also describe activities by a person or municipality, including the county, that are contrary to or inconsistent with the approved plan.

(3) The weight or volume of each source-separated material that was recycled by each municipal recycling program operating in the county in the preceding calendar year, and the weight or volume of each source-separated material that was recycled by the county or another recycling program operating in the county in the preceding calendar year.

(4) Documentation that the assumptions the county made in developing capacity assurance in the plan remain valid.

Suchapter D. GRANTS

GENERAL PROVISIONS FOR AWARDING GRANTS

§ 272.311. Financial management.

(a) Obligations of the Commonwealth under this subchapter are contingent upon the availability of funds for these grant programs.

(b) For a grant under this subchapter, if the Department receives grant requests for which approved costs exceed available funds for that type of grant, the Department may determine grant awards based on population of the area for which the grant is requested, the extent to which the grant is based on cooperation among several municipalities and the extent to which the grant award will further the purposes of the Municipal Waste Planning, Recycling and Waste Reduction Act and section 208 of the Small Business and Household Pollution Prevention Program Act (35 P. S. § 6029.208).

§ 272.313. General requirements for grant applications.

(a) A grant application under this subchapter shall be submitted on a form prepared and furnished by the Department. The application shall contain information the Department deems necessary to carry out the Municipal Waste Planning, Recycling and Waste Reduction Act.

(b) A grant application shall be submitted by a municipality. A municipal authority may not submit a grant application. A municipality that receives a grant may pass funds from the grant to a municipal authority.

(c) To the greatest extent feasible, grant applications shall be submitted to the Department on paper that is manufactured partly or entirely from postconsumer material.

(d) Prior to development of a grant application under § 272.321 or § 272.331 (relating to planning grants; and grants for development and implementation of municipal recycling programs), the applicant shall participate in a preapplication conference with the Department.

§ 272.314. Limits on Department's authority to award grants.

(a) The Department may not award more than 10% of the moneys available under any type of grant under this subchapter to a county. This limitation shall be based on funds available for that type of grant in the fiscal year during which the application is filed.

(b) The Department will not award a grant under this subchapter to a municipality unless the applicant demonstrates to the Department's satisfaction that:

(1) The applicant has complied with the conditions in previously awarded grants under this subchapter or conditions in previously awarded grants under the act or the Pennsylvania Solid Waste-Resource Recovery Development Act (35 P. S. §§ 755.1—755.14).

(2) The applicant has complied with the Municipal Waste Planning, Recycling and Waste Reduction Act, § 272.261 (relating to annual report by county) and this subchapter.

(3) The applicant has not previously been reimbursed under the Municipal Waste Planning, Recycling and Waste Reduction Act for the expenses requested.

(c) Activities reimbursed under one grant program under the Municipal Waste Planning, Recycling and Waste Reduction Act will not be eligible as a match under any other grant program under that act.

(d) The Department may withhold funds for grants under this subchapter if any of the following occurs:

(1) The application has failed to provide material information concerning the grant, or has provided false information concerning the grant.

(2) Equipment purchased with previous grant funds has not been utilized in compliance with program requirements.

(3) The grantee has not met the requirements of § 272.421 (relating to program elements).

(4) The grantee maintains improper or inadequate documentation to demonstrate proper grant expenditures in administering any grant under the Municipal Waste Planning, Recycling and Waste Reduction Act.

(e) A grant offering by the Department under this subchapter will lapse if the funds offered are not encumbered within 1 year of the date of offering or if the grantee or the Department determines that the grant funds will not be utilized. The funds lapsed will then be available to applicants in subsequent offerings.

(f) The Department may not award a grant under § 272.321 or § 272.331 (relating to planning grants; and grants for development and implementation of municipal recycling programs) unless a preapplication conference is held between the applicant and the Department prior to development of the grant application.

§ 272.316. Performance audit.

A grant application under this subchapter shall include provisions for an independent performance audit, which shall be completed within 6 months after reimbursable work under the grant has been completed. This audit may be performed as part of another independent audit conducted for the municipality.

PLANNING GRANTS

§ 272.321. Scope of grant.

The Department will, upon application from a county, award grants for one or more of the following:

(1) The cost of preparing municipal waste management plans in accordance with Subchapter C (relating to municipal waste planning).

(2) The cost of carrying out related studies, surveys, investigations, inquiries, research and analyses, including those related to siting.

(3) Environmental mediation.

(4) Feasibility studies and project development for municipal waste processing, disposal or composting facilities, except for facilities for the combustion of municipal waste that are not proposed to be operated for the recovery of energy.

(5) Educational programs on pollution prevention, other technical assistance to small business for pollution prevention and educational programs on household hazardous waste.

§ 272.322. Eligible costs.

(a) The grant to a county under § 272.321 (relating to scope of grant) shall be 80% of the approved cost of the plans and studies.

(b) Costs not approved for a grant under § 272.321 include, but are not limited to:

(1) Capital costs such as equipment and construction.

(2) Direct salaries.

(3) Costs incurred in preparing a grant application.

(4) Indirect costs as defined in Office of Management and Budget Circular A-87, as amended, entitled "Cost Principles for State, Local and Indian Tribal Governments," 60 FR 266.484 (1995). This circular is available from the Department upon request.

§ 272.323. Grant application.

The application shall contain a detailed description of the proposed project, the proposed duration of the project, source of the fundings match for the project and an explanation of how the project will further the purposes of the Municipal Waste Planning, Recycling and Waste Reduction Act and the Small Business and Household Pollution Prevention Program Act.

GRANTS FOR DEVELOPMENT AND IMPLEMENTATION OF MUNICIPAL RECYCLING PROGRAMS

§ 272.332. Eligible costs.

(a) The grant shall be 90% of the approved cost of establishing a municipal recycling program. If the municipality is a financially distressed municipality under section 203(f) of the Financially Distressed Municipalities Act (53 P. S. § 11701.203(f)), that is required to establish a municipal recycling program under section 1501 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.1501), the grant under this section shall be 100% of the approved cost of establishing a municipal recycling program.

(b) Costs not approved for a grant include, but are not limited to:

(1) Operating and maintenance costs for a municipal recycling program.

(2) Costs incurred in preparing a grant application.

(3) Direct salaries.

(c) The grant may be used to pay for transportation equipment. If the equipment will not be used full time for the program, the application shall prorate the cost of the

equipment according to the percentage of time that the equipment will be dedicated to the recycling program. If the application is approved, the equipment shall be used for the purposes outlined in the grant for the life of the equipment.

(d) Equipment purchased with funds from a grant may be owned by a municipal authority or organization of municipal governments, if requested in writing by the grantee. Equipment may be used by, or leased to, another municipality, a not-for-profit agency, an organization of municipal governments or a municipal authority.

(e) Equipment or property purchased with funds from a grant shall be used exclusively for its intended purpose for its useful life. Useful life shall be considered the period of time a particular item is able to function as intended, with the aid of proper maintenance and repairs.

(f) Equipment and property purchased with funds from a grant and with a purchase price of \$1,000 or greater shall be clearly identified by the grantee, through a sign or lettering permanently affixed to the equipment or property, as being funded by a Department of Environmental Protection Act 101 section 902 recycling grant.

(g) If equipment or property purchased with funds from a grant is no longer used for the intended purposes under the grant, the grantee shall notify the Department in writing. The Department shall be reimbursed for the value of the equipment or property in the same proportion that funding for the equipment or property was originally granted, unless the equipment or property is sold to another municipality for waste reduction or recycling purposes. The reimbursement shall be based either on the sale price of the equipment or property if applicable or its depreciated market value. Upon approval of the Department, equipment may be traded in for or toward the cost of recycling equipment. The sale price of equipment or property sold to another municipality cannot exceed the dollar amount the municipality paid as match for the original grant.

§ 272.333. Grant application.

(a) The application shall contain a detailed explanation of the structure and operation of the program, the proposed duration of the program, the source of the funding match for the program and an explanation of how the program will further the purposes of the Municipal Waste Planning, Recycling and Waste Reduction Act.

(b) The application shall describe the collection system for the program, including:

(1) Material collected and persons affected.

(2) Contracts for the operation of the program.

(3) Markets or uses for collected materials, giving consideration to the results of the market development study required by section 508 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.508).

(4) Ordinances or other mechanisms that will be used to ensure that materials are collected.

(5) Public information and education.

(6) Program economics, including processing or disposal cost which were avoided.

(7) Other information deemed necessary by the Department.

(c) If the municipality proposes to use some or all of the grant funds to purchase mechanical processing equipment, the application shall also contain the following:

(1) A dated copy of a public notice that was published once a week for 2 consecutive weeks in a newspaper of general circulation in the municipality. The notice shall:

(i) State that funding is being sought from the Commonwealth's recycling fund, under the Municipal Waste Planning, Recycling and Waste Reduction Act, to assist with the purchase of the mechanical processing equipment.

(ii) Describe in reasonable detail the equipment the municipality proposes to purchase or cause to be purchased.

(iii) Describe the intended uses of the equipment.

(iv) State that interested persons may submit comments to the municipality within 30 days of publication of the notice.

(v) Be in the form of a display advertisement, legal notice or public notice.

(2) A description of responses to the notice.

(3) An explanation of why the municipality has concluded the equipment is not available from the private sector.

GRANTS FOR COUNTY RECYCLING COORDINATORS

§ 272.341. Scope of grant.

The Department will award grants for authorized salary and expenses for county recycling coordinators, upon application from a county. The activities for which a grant may be used include:

(1) Assisting the county in developing and implementing the waste reduction, recycling, leaf and yard waste, and household hazardous waste components of its solid waste management plan.

(2) Identifying and encouraging opportunities for intermunicipal cooperation and cooperative efforts with other organizations to further waste reduction, recycling, leaf and yard waste composting, and household hazardous waste programs.

(3) Providing technical assistance to municipalities on developing and implementing waste reduction, recycling, leaf and yard waste composting, and household hazardous waste programs.

(4) Developing educational programs and materials on waste reduction, recycling, leaf and yard waste composting, household hazardous waste programs and litter control.

(5) Serving as a contact for waste reduction, recycling, leaf and yard waste composting, and household hazardous waste program questions from within the county.

(6) Participating in, and coordinating when appropriate, waste reduction, recycling, leaf and yard waste composting, and household hazardous waste meetings, training programs, workshops and conferences.

(7) Speaking to schools and community, business and government organizations about waste reduction, recycling, leaf and yard waste composting, and household hazardous waste programs.

(8) Assisting municipalities in identifying recyclable materials capable of being marketed and locating markets.

(9) Assisting municipalities with developing and coordinating leaf and yard waste collection and composting programs and identifying markets for compost.

(10) Assisting municipalities in preparing recycling and household hazardous waste program grant applications.

(11) Collecting data on municipal recycling programs within the county and on commercial, institutional and municipal establishment recycling, and recycling at community activities and reporting the data annually to the Department on or before April 1.

(12) Identifying sources of recyclable products and products made of recycled materials and encouraging the use of those items to support county and municipal recycling programs.

(13) Developing recycling programs for special materials such as automotive waste oil, tires, household hazardous waste, white goods, batteries, electronic equipment, computers and devices that contain cathode ray tubes such as televisions and computer monitors.

(14) Administration and management of county recycling programs.

(15) Assessing the implementation of recycling programs within the county.

§ 272.342. Eligible costs.

(a) The grant shall be 50% of the approved cost of the recycling coordinator's salary and expenses.

(b) Costs not approved for a grant include, but are not limited to:

(1) Activities and expenses incurred by the recycling coordinator that are not related to recycling.

(2) Office equipment and office maintenance.

(3) Office supplies, duplicating and postage.

(4) Permit application processing activities, including consulting fees for technical consultation on specific permits.

(5) Clothing allowances.

PERFORMANCE GRANTS FOR RECYCLING PROGRAMS

§ 272.353. Grant application.

(a) The application shall contain a description of the weight of each material recycled and marketed. The weight shall be reduced for any residue materials.

(b) The application shall be supported by documentation which includes weigh slips or receipts verifying the materials claimed as recycled and marketed and:

(1) The supporting documentation shall be retained by the applicant for 4 years from the end date of the year the materials were recycled and marketed.

(2) The supporting documentation shall be made available to the Department, the Office of Attorney General, the Office of the Treasurer or the agents of those offices.

(c) If the application involves a recycling operation that serves more than one municipality, the application shall describe the total weight and type of materials collected by the operation, and the applicant's contribution.

GRANTS FOR HOST MUNICIPALITY INSPECTORS

§ 272.362. Eligible costs.

(a) The grant shall be 50% of the approved cost of the salaries and expenses of up to two certified host municipality inspectors.

(b) Costs not approved for a grant include, but are not limited to:

(1) Activities and expenses incurred by the inspectors that are not related to inspection of resource recovery facilities or municipal waste landfills located in the municipality.

(2) Administrative, management or clerical activities.

(3) Office equipment and office maintenance.

(4) Office supplies, duplicating and postage.

(5) Clothing allowances.

(6) Costs covered under the grant provided by § 272.371 (relating to scope of grant).

(7) Costs incurred by the municipality or the inspector prior to certification or after decertification of the inspector by the Department or while the inspector is on inactive status.

§ 272.364. Maintaining certification; inactive status; decertification; recertification.

(a) *Maintaining certification.*

(1) To maintain certification, a host municipality inspector shall:

(i) Complete a Department-sponsored advanced training course once every 3 years and perform satisfactorily on the written examination.

(ii) Conduct at least one inspection per calendar year. The Department will rely on written confirmation of the inspection, by the host municipality, as evidence that the inspection occurred timely.

(2) Failure to satisfy paragraph (1)(i) or (ii) will automatically result in inactive status for the host municipality inspector, beginning July 1 of the year following the failure, unless the inspector takes the Department sponsored advance training course and performs satisfactorily on the written examination by July 1 of the year following the failure.

(3) A host municipality inspector whose status is "inactive" will be subject to the prohibitions of subsection (b).

(b) *Inactive status.*

(1) A host municipality inspector whose status is "inactive" under subsection (a) may not conduct activities of a certified host municipality inspector during the term of the inactive status. The prohibited activities include:

(i) Entering the waste facility property as a host municipality inspector.

(ii) Inspecting the waste facility records.

(iii) Taking samples at the waste facility.

(iv) Conducting inspections at the waste facility.

(v) Issuing an order at or to the waste facility under section 1102 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.1102).

(2) The Department will not pay the host municipality's cost of employing a certified host municipality inspector incurred during any period of time during which the inspector's status is "inactive," except as provided in paragraph (3).

(3) A host municipality inspector whose status is "inactive" may revert to "active" status by completing the Department sponsored advanced training course and performing satisfactorily on the written examination. The Department will reimburse the host municipality for the cost of taking the training and examination in accordance with section 1102 of the Municipal Waste Planning,

Recycling and Waste Reduction Act if the inspector performs satisfactorily on the written examination.

(c) *Decertification.* Acts of a host municipality inspector which may be grounds for decertification include:

(1) Knowingly violating a provision of the Municipal Waste Planning, Recycling and Waste Reduction Act, this title, or an order of the Department or its agent.

(2) Endangering in the course of the inspector's duties the health or safety of a resident of the host municipality, or of an owner, employee, customer or visitor of a municipal waste landfill or resource recovery facility.

(3) Knowingly distributing, to any person other than an employee of the Department, the Environmental Protection Agency, the office of Pennsylvania's Attorney General or the United States Department of Justice, business information of a municipal waste landfill or resource recovery facility deemed confidential by the Department under section 1713 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.1713) without prior written approval of the owner or chief operating manager of the facility.

(4) Knowingly submitting false information to the Department or its agent.

(5) Knowingly exceeding the scope of authority granted to a host municipality inspector under section 1102 of the Municipal Waste Planning, Recycling and Waste Reduction Act.

(d) *Notification upon decertification.* Upon decertification, the Department will notify in writing the host municipality inspector, the host municipality and the affected municipal waste landfill or resource recovery facility of the following:

(1) The name of the decertified inspector and the related host municipality.

(2) The effective date of the decertification.

(3) Whether the inspector will be eligible for recertification. In deciding whether a decertified inspector will be eligible for recertification, the Department will consider the nature and gravity of the misconduct which resulted in the decertification.

(4) The reason for the decertification.

(e) *Recertification.* A decertified host municipality inspector is not eligible to serve as a host municipality inspector for any municipality for 2 years from the date of the Department's notification of decertification. To become recertified, an eligible decertified host municipality inspector shall comply with section 1102 of the Municipal Waste Planning, Recycling and Waste Reduction Act.

Subchapter E. MUNICIPAL RECYCLING PROGRAMS

REQUIRED RECYCLING PROGRAMS

§ 272.411. Affected municipalities.

(a) By September 26, 1990, a municipality other than a county that has a population of 10,000 or more shall establish and implement a source separation and collection program for recyclable materials in accordance with this subchapter.

(b) By September 26, 1991, a municipality other than a county that has a population of more than 5,000 but less than 10,000 and which has a population density of more than 300 per square mile, shall establish and implement a source separation and collection program for recyclable materials in accordance with this subchapter.

(c) For purposes of this section, population shall be determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce.

(d) The results of the 2000 census, or a subsequent decennial census, shall affect a municipality's obligation to establish and implement a recycling program under this subchapter only as follows:

(1) A municipality that meets requirements of subsection (a) or (b) but which was not required by the previous decennial census to conduct a recycling program, shall establish and implement a source separation and collection program in accordance with this subchapter within 2 years after the census data becomes official.

(2) A municipality that no longer meets the requirements of subsection (a) or (b) based on the most recent decennial census, but which was required by the previous decennial census to conduct a recycling program, may discontinue the program.

PROGRAM ELEMENTS

§ 272.426. Alternative to curbside program.

(a) The governing body of a municipality that is required by this subchapter to develop and implement a curbside recycling program may request the Department to approve an alternative recycling program. This alternative may include recycling services by a municipal waste landfill or resource recovery facility, or recycling facility.

(b) The Department will not approve an alternative recycling program unless the municipality demonstrates the following to the Department's satisfaction:

(1) The facility in which recycling would be performed has a municipal waste management permit from the Department under this article.

(2) The facility, or a substantially similar model of the facility, has effectively processed municipal waste in the United States for at least 2 years. To meet this requirement, a facility shall have:

(i) Operated at no less than 90% of its capacity for the 2-year period, and processed municipal waste during this period that is substantially similar to waste generated by the requesting municipality that would be processed in the future.

(ii) Recycled and marketed 25% of waste that is received and be capable of recycling 25% of waste in the future, based on contractual arrangements and other factors. Products derived from municipal waste which will be incinerated, whether for energy production or not, or products derived and then disposed, do not qualify as a contribution to the 25% recycling requirement. Materials extracted from municipal waste for recycling purposes, including compost, and marketed qualify.

(3) The materials recovered or created by the facility can be marketed as readily as materials collected through a curbside program. The operator shall show where materials are sent for recycling during the life of the demonstration period, even if it is not the same facility.

(4) The alternative program is preferable to a curbside recycling program, based on a detailed analysis of the comparative economic costs, including avoided costs, and environmental benefits of each program.

(c) Immediately upon filing the request, the municipality shall publish a written notice of its request for at least 1 week in a newspaper of general circulation in the area where the municipality is located. The notice shall in-

clude a brief description of the nature of the alternative program and the municipality's economic and environmental justification for the alternative program.

(d) A request for approval of an alternative recycling program may not be construed to allow the delay or suspension of development or implementation of a curbside recycling program pending the Department's decision on the request. An approval of an alternative recycling program may not be construed to allow the delay or suspension of development or implementation of a curbside recycling program pending the availability for use of the alternative program.

(e) The Department may revoke approval granted under this section if the alternative recycling program is not meeting the requirements of this section or is not operating in accordance with the terms of the municipality's request to the Department under this section.

Subchapter F. HOUSEHOLD HAZARDOUS WASTE COLLECTION

REGISTRATION AND APPROVAL OF PROGRAMS

§ 272.513. Contract.

The application shall include a negotiated contract between the person or municipality and the collection contractor. The contract shall meet the following requirements:

(1) The contract shall establish the responsibilities of each party for the safe collection, transportation and disposal or treatment of household hazardous waste that is deposited at the collection event in accordance with the statutes and regulations of the Commonwealth and the United States.

(2) The contract shall require that the collection contractor will provide the person or municipality with a statement that lists the names and qualifications of personnel accepting waste at the collection event.

(3) The contract shall provide for the cleanup of the collection site and certification of the cleanup of the site by both parties.

CHAPTER 273. MUNICIPAL WASTE LANDFILLS

Subchapter B. APPLICATION REQUIREMENTS

PHASE I APPLICATION REQUIREMENTS

§ 273.111. General.

The Phase I application shall:

(1) Comply with §§ 273.112—273.122 (relating to Phase I application requirements).

(2) Comply with Chapter 271 Subchapter B (relating to general requirements for permits and permit applications).

§ 273.112. Facility plan.

An application to operate a municipal waste landfill shall contain a narrative describing the following:

(1) The general operational concept for the proposed facility, including the origin, composition and weight or volume of solid waste that is proposed to be disposed of at the facility, the type of liner system, the proposed capacity of the facility, the expected life of the facility and the size, sequence and timing of solid waste disposal operations at the facility.

(2) A detailed description of the volume of soil needed to construct and operate the facility and of the method by which the soil will be delivered. The description will include the number of trucks, the access roads they will

use, delivery times and any other information relevant to assessing the impacts of the operation.

§ 273.113. Maps and related information.

(a) An application shall contain a topographic map, on a scale of 1 inch equals no more than 200 feet with 10-foot maximum contour intervals, including necessary narrative descriptions, which shows the following:

(1) The boundaries and names of present owners of record of land, both surface and subsurface, and including easements, rights-of-way and other property interests, for the proposed permit area and adjacent area; the boundaries of the land within the proposed permit area; and a description of title, deed or usage restrictions affecting the proposed permit area.

* * * * *

(c) A different scale for the topographic map required in subsection (a) may be used if approved in writing by the Department.

§ 273.114. Description of geology, soils and hydrology—general requirements.

In preparing the soils, geology and hydrology descriptions required by §§ 273.115—273.122, the applicant shall include information about the proposed permit area and the adjacent area. Plans and cross sections submitted to comply with §§ 273.115—273.119 shall be on a scale satisfactory to the Department. The map shall be on a scale of 1 inch equals no more than 200 feet, with contour intervals at a maximum of 10 feet. Maps and cross sections submitted for a particular application shall be of the same or easily compared scales.

§ 273.115. Geology and groundwater description.

(a) An application shall contain a description of the geology and groundwater in the proposed permit area and adjacent areas down to and including the lowest aquifer that may be affected by the facility, including the following:

(1) The results of a sufficient number of test borings and core borings to accurately characterize geology, soils, groundwater flow, groundwater chemistry and flow systems of the proposed permit area and adjacent area, which shall be at least three test borings. At least one test boring shall be a core boring. The applicant shall include the actual surface elevations of the drill holes.

(2) Stratigraphy, lithologic, physical characteristics and thickness of each stratum, including the location and depth of aquifers.

(3) The hydrologic characteristics of each aquifer described in paragraph (2), including field test data for hydraulic conductivity, storage coefficient and transmissivity, groundwater hydraulic gradient and velocity. The description of these characteristics shall be based on multiple well aquifer tests. Alternative techniques approved by the Department may be employed when multiple well aquifer tests are not feasible. The application shall include the procedures and calculations used to determine these characteristics.

(4) The geologic structure within the proposed permit area and adjacent area, and its relation to the regional geological structure.

(5) The uses of each aquifer.

(6) Aquifer characteristics necessary to accurately describe three dimensional groundwater flow through the proposed permit area and adjacent area, including storage and discharge characteristics.

(7) Extent of coal and noncoal mineral deposits and mines within the proposed permit area, as required by § 273.120 (relating to mineral deposits information).

(8) The well head protection areas in accordance with § 109.1 (relating to definitions) that may be impacted by the facility.

(9) A groundwater contour map based upon the highest groundwater level recorded monthly in each boring for the previous year. The Department may require more frequent measurements after significant precipitation events.

(b) A boring or coring not cased and capped or not to be used for groundwater monitoring shall be grouted shut or otherwise sealed in a manner approved by the Department.

§ 273.116. Groundwater quality description.

(a) An application shall contain a description of the chemical characteristics of each aquifer in the proposed permit area and adjacent area, based on at least two quarters of monitoring data, one of which shall include the season of the highest local groundwater levels. This description shall be based on quarterly sampling and analysis from each monitoring well for the following parameters:

(1) Ammonia-nitrogen, chloride, chemical oxygen demand, nitrate-nitrogen, pH, specific conductance, total organic carbon, total phenolics, iron, manganese and sodium.

(2) Tetrachloroethene, trichloroethene, 1,1,1-trichloroethane, 1,2-dibromoethane, 1,1-dichloroethene, 1,2-dichloroethene (cis and trans isomers), vinyl chloride, 1,1-dichloroethane, 1,2-dichloroethane, methylene chloride, toluene, ethyl benzene, benzene and xylene.

(3) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on United States Geological Survey datum.

(4) Total alkalinity, fluoride and sulfate and total and dissolved concentrations of each of the following: arsenic, barium, cadmium, chromium, copper, lead, magnesium, mercury, potassium, selenium, silver and zinc.

(5) 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, 1,1,2-trichloroethane, 1,2,3-trichloropropane, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 1,2-dichloropropane, 3-chloro-1-propene, 4-methyl-2-pentanone, bromomethane, carbon tetrachloride, chlorobenzene, chlorodibromomethane, chloroethane, chloromethane, cis-1,3-dichloropropene, trans-1,3-dichloropropene, dichlorodifluoromethane, methyl ethyl ketone, tri-bromomethane and trichlorofluoromethane.

(6) Ten volatile organic compounds not otherwise identified in this section, based on those compounds showing the greatest apparent concentration from the peaks of a mass spectra of each sample. The ten compounds shall be identified but their concentration does not require measurement.

(b) One year of data consistent with this section shall be taken prior to the disposal or storage of waste at the facility.

(c) Monitoring wells under this section shall be designed, constructed and maintained under §§ 273.281—273.283 (relating to general requirements; number, location and depth of monitoring points; and standards for wells and casing of wells). Sampling and analysis shall be

conducted in accordance with a plan approved by the Department under § 273.152(b) (relating to water quality monitoring plan).

§ 273.117. Soil description.

(a) An application shall contain:

(1) The depth to the seasonal high water table within the proposed permit area and adjacent area to demonstrate that seasonal high water table will not contact the liner system.

(2) A description of soils to be used for daily, intermediate and final cover, and facility construction, including texture, chemical description, laboratory particle size analysis and quantity. A cross section of the borrow pits within the proposed permit area shall be included.

(b) In preparing the soils description and elevations, the applicant shall:

(1) Base the description on a sufficient number of pits, excavations and samples to allow an accurate characterization of the soils in the proposed permit area and adjacent area, and each onsite or offsite borrow area.

(2) Use the following soil classification systems:

(i) For daily, intermediate and final cover, the United States Department of Agriculture Soil Classification System.

(ii) For the liner system, site construction and other noncover uses, the Unified Soil Classification System.

(3) Conduct required laboratory particle size analysis according to ASTM D 422 (Standard Method for Particle-Size Analysis of Soils) or another analytical method approved, in writing, by the Department prior to the analyses.

§ 273.120. Mineral deposits information.

(a) If the proposed permit area and adjacent area overlie existing workings of an underground mine, the applicant shall submit sufficient information to evaluate the potential for mine subsidence damage to the facility, including the following:

(1) Maps and plans showing previous mining operations underlying the proposed facility.

(2) An investigation, with supporting documentation, by a registered professional engineer with geotechnical expertise addressing the probability and potential impacts of future subsidence. The investigation shall address the potential for additional mining beneath the permit and adjacent area, the stability of the final underground workings, the maximum subsidence likely to occur in the future and the effect of that subsidence on the integrity of the facility, and any measures which have been or will be taken to stabilize the surface.

(b) If the proposed permit area or adjacent area overlies recoverable or mineable coals, the applicant shall meet one of the following requirements:

(1) The applicant shall demonstrate that the applicant owns the coal and warrants that the coal will not be mined as long as waste remains on the site.

(2) The applicant shall meet the following requirements:

(i) The applicant owned or entered into an enforceable option contract to purchase land on which the expansion would operate on or before December 23, 2000, and still

holds the option rights, still owns the land or owns the land pursuant to the option rights contract when the permit expansion is issued.

(ii) The applicant submits a written agreement executed prior to December 23, 2000, that demonstrates that coal providing support will not be mined as long as waste remains on the site.

§ 273.121. Notification of proximity to airport.

An applicant shall notify the Bureau of Aviation of the Department of Transportation, the Federal Aviation Administration and the airport if a proposed landfill or expansion is within 6 miles of an airport runway. The application shall include a copy of each notification and each response to each notification received by the applicant.

**PHASE II APPLICATION
REQUIREMENTS—GENERAL PROVISIONS**

§ 273.132. Operation plan.

An application shall contain a description of the municipal waste landfill operations proposed during the life of the facility within the proposed permit area, including, at a minimum, the following:

(1) A narrative describing the type and method of municipal waste landfill procedures, procedures for inspection and monitoring of incoming waste, sequence of landfilling activity, type of landfilling activity, proposed engineering techniques and the major equipment to be used under § 273.215 (relating to equipment), using the maps and grids required by § 273.133 (relating to map and grid requirements) as a basis for the description.

(2) A narrative explaining the method and schedule for construction, operation, modification, use, maintenance and removal of the following components of the proposed facility, unless their retention is proposed for postclosure land use as follows:

(i) Dams, embankments, ditches and other impoundments.

(ii) Borrow pits, soil storage and handling areas and structures.

(iii) Scales and weigh station, if required.

(iv) Water and air pollution control facilities.

(v) Erosion control facilities.

(vi) Equipment storage and maintenance buildings, and other buildings.

(vii) Access roads.

(3) A construction schedule and sequence of operations tied to the grid coordinate system required by § 273.211 (relating to signs and markers), a site preparation plan and a schedule for disposing of solid waste at the site, including the maximum daily weight or volume of waste that will be received at the facility.

(4) An explanation of how the applicant intends to comply with § 273.214 (relating to measurement and inspection of waste).

(5) A plan for assuring that solid waste received at the facility is consistent with § 273.201 (relating to basic limitations).

(6) The proposed operating hours of the proposed facility. The operating hours include those hours related to construction and other activities related to operation of the facility.

§ 273.133. Map and grid requirements.

(a) An application shall contain a topographic map of the proposed permit and adjacent areas showing the following:

(1) The boundaries of lands proposed to be affected over the estimated total life of the proposed operation and the sequence of landfilling and closure.

(2) A change in a component of the facility or a feature within the proposed permit area to be caused by the proposed operation.

(3) Buildings, utility corridors and facilities which will be used in the operation.

(4) The areas of land for which a bond will be posted under Chapter 271, Subchapter D (relating to financial assurances requirements).

(5) The solid waste storage, processing or unloading areas.

(6) The water diversion, collection, conveyance, erosion and sedimentation control, treatment, storage and discharge facilities to be used.

(7) Location and elevation of the permanent physical markers for the grid coordinate system under subsection (b).

(8) The gas management, collection and control facilities.

(9) The boundaries of construction activities.

(10) The location of barriers, fences and similar structures required by § 273.212 (relating to access control).

(11) The location of each sedimentation pond, permanent water impoundment or similar facility.

(12) The location of access roads to the site, including slopes, grades and lengths of the roads.

(13) The location and identification of monitoring wells.

(14) A designated area for vehicles for use in the event of the detection of waste containing radioactive material. The designated area shall, by location or shielding, protect the environment, facility staff and public from radiation originating in the vehicle. The Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, Document Number 250-3100-001, describes various factors to consider in determining an appropriate designated area.

(b) The applicant shall also submit a grid coordinate system for the entire proposed permit area. The horizontal control system shall consist of a grid not to exceed 200-foot square sections. A permanent benchmark for horizontal and vertical control shall be shown. The grid system shall be tied to the benchmark and the baseline.

§ 273.134. Plan for access roads.

The application shall contain designs, cross sections and specifications for access roads, including load limits, under § 273.213 (relating to access roads).

§ 273.136. Nuisance minimization and control plan.

(a) The application shall contain a plan in accordance with § 273.218 (relating to nuisance minimization and control) to minimize and control hazards or nuisances from vectors, odors, noise, dust and other nuisances not otherwise provided for in the permit application.

(b) The plan shall include the following:

(1) Provisions for the routine assessment and control of vector infestation.

(2) Methods to minimize and control nuisances from odors, dustfall and noise off the property boundary from the facility.

(3) For odors, the determination of normal and adverse weather conditions based on site-specific meteorological data. Prior to the installation of equipment and collection of meteorological data, a protocol for the installation and data collection shall be approved by the Department.

(c) The plan required in subsection (a) may include a contractual arrangement for services of an exterminator or an air quality, noise, dust control or other professional.

§ 273.139. Relationship to county plans.

(a) This section requires the submission of certain information in the permit application when the Department has given final approval to a municipal waste management plan for the county in which the proposed facility, or proposed additional capacity for a facility, would be located, and the county has submitted to the Department legal documents necessary to implement the plan under § 272.245 (relating to submission of implementing documents).

(b) An application shall contain the following:

(1) An explanation of whether the proposed facility is provided for in the approved plan for the host county. A facility is "provided for" if it is designated by the host county to provide capacity assurance in the approved host county plan. A facility analyzed as part of a planning process, but not designated, will not be considered "provided for."

(2) If the proposed facility is not provided for in the approved host county plan:

(i) A detailed explanation of whether the proposed facility will interfere with implementation of the approved plan.

(ii) A detailed explanation of whether the proposed facility will interfere with municipal waste collection, storage, transportation, processing or disposal in the host county.

(iii) A detailed response to objection, if any, filed by the governing body of the host county within 60 days of the written notice under section 504 of the act (35 P. S. § 6018.504).

§ 273.140. Daily volume.

(a) The application shall contain proposed average and maximum daily volumes for the facility, and a detailed justification for these volumes, based on §§ 271.126 and 271.127 (relating to requirement for environmental assessment; and environmental assessment), as well as section 1112 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.1112).

(b) The application for a permit modification to increase daily volumes shall include calculations demonstrating that increased daily volumes will not reduce the remaining lifetime of a landfill based on its remaining permitted capacity to less than 3 years from the date of issuance of the permit modifications.

(c) The average daily volume is a limit on the volume of solid waste that is permitted to be received at the facility, and shall be computed quarterly by averaging the total volume received over the quarter.

§ 273.140a. Radiation protection action plan.

(a) An application shall contain an action plan specifying procedures for monitoring for and responding to

radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting.

(b) The action plan shall be prepared in accordance with the Department's "Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document Number 250-3100-001, or in a manner at least as protective of the environment, facility staff and public health and safety and which meets all statutory and regulatory requirements.

(c) The action plan shall be incorporated into the landfill's approved waste analysis plan, under § 271.613 (relating to waste analysis plan).

PHASE II APPLICATION REQUIREMENTS—COVER AND REVEGETATION

§ 273.141. Compaction and cover plan.

An application shall contain a plan for compaction and cover at the proposed facility under § 273.216 (relating to unloading and compaction) and §§ 273.232—273.234 (relating to daily cover; intermediate cover and slopes; and final cover and grading), including, at a minimum, the following information:

(1) The procedures for placement and compaction of solid waste and the degree of compaction of waste.

(2) The number and thickness of lifts.

(3) The materials and procedures for application of daily, intermediate and final cover material, that meet the standards of §§ 273.232—273.234.

(4) The procedures to establish intermediate and final elevations for the landfill.

PHASE II APPLICATION REQUIREMENTS—WATER QUALITY PROTECTION MONITORING

§ 273.152. Water quality monitoring plan.

(a) An application shall contain a water quality monitoring plan showing how the operator intends to comply with §§ 273.281—273.288 (relating to water quality monitoring). The plan shall include, at a minimum, the following:

(1) The number, location and depth of proposed monitoring points.

(2) Preoperational data showing existing groundwater quality, as required by § 273.116 (relating to groundwater quality description), and a procedure to establish this groundwater quality.

(b) The application shall contain a groundwater sampling and analysis plan. The plan shall include:

(1) Procedures and techniques designed to accurately measure groundwater quality upgradient, beneath and downgradient of the proposed waste disposal area.

(2) Department-approved sampling and analytical methods that are specific to the proposed facility and that will accurately measure solid waste, solid waste constituent, leachate or constituent of decomposition in the groundwater.

(3) Procedures and techniques for sample collection, sample preservation and shipment, analytical procedures, chain of custody control and field and laboratory quality assurance and quality control.

(c) The Department may approve the use of an alternate groundwater monitoring system for facilities located in the anthracite coal region if the applicant demon-

strates the following to the Department's satisfaction with a detailed hydrogeologic study:

(1) The nature and extent of underground coal mining beneath the proposed facility makes impracticable the installation of the groundwater monitoring system required by this subchapter.

(2) The proposed alternate system is capable of completely and accurately identifying groundwater degradation and pollution from the proposed facility.

PHASE II APPLICATION REQUIREMENTS—LINERS AND LEACHATE MANAGEMENT

§ 273.161. Liner system and leachate control plan.

(a) The application shall contain plans, drawings, cross sections and specifications for a liner system to demonstrate compliance with §§ 273.251—273.260 (relating to liner system), including the following:

(1) Design of the liner system, including thickness and characteristics of the subbase, the thickness and characteristics of the leachate detection zone, the design for the leachate monitoring system in the leachate detection zone, the nature and thickness of the liner material, the thickness and characteristics of the protective cover and leachate collection zone and the design for the leachate collection system in the collection zone.

(2) A plan for installing the liner system.

(b) The application shall include a quality assurance and quality control plan for the construction and installation of the liner system. The plan shall include, at a minimum, the following:

(1) A description of the testing procedures and construction methods proposed to be implemented during construction of the liner system.

(2) A description of the manner in which the protective cover and liner system will be maintained and protected in unfilled portions of the disposal area prior to and during placement of the initial life of solid waste.

(3) A description of the manner in which the protective cover and liner system will be protected from weather prior to and during placement of the initial life of solid waste.

(4) A description of the qualifications of the quality assurance and quality control personnel, presented in terms of experience and training necessary to implement the plan.

(5) A sampling plan for every component of the liner system, including sample size, methods for determining sample locations, sampling frequency, acceptance and rejection criteria and methods for ensuring that corrective measures are implemented as soon as possible.

(6) A plan for documenting compliance with the quality assurance and quality control plan.

(c) The application shall demonstrate that leachate will not adversely affect the physical or chemical characteristics of the proposed liner system, or inhibit the liner's ability to restrict the flow of solid waste, solid waste constituents or leachate, based on the most recent edition of EPA or ASTM guidelines approved by the Department.

(d) The application shall include a complete description of the physical, chemical, mechanical and thermal properties for the proposed primary and secondary liners, based on ASTM methods when appropriate. Except to the extent that the Department waives in writing any of the follow-

ing for nonsynthetic secondary liners, these properties shall include, at a minimum:

- (1) Thickness.
- (2) Tensile strength at yield.
- (3) Elongation at yield.
- (4) Elongation at break.
- (5) Density.
- (6) Tear resistance.
- (7) Carbon black content.
- (8) Puncture resistance.
- (9) Seam strength—(percentage of liner strength).
- (10) Ultraviolet light resistance.
- (11) Carbon black dispersion.
- (12) Permeability.
- (13) Liner friction angle in degress.
- (14) Stress crack resistance.
- (15) Oxative induction time.
- (16) Chemical compatibility.
- (17) Percent recycled materials.

§ 273.163. Modifications of leachate treatment plan.

(a) If a problem identified in § 273.277 (relating to Departmental notice and remedial action) occurs, the operator shall submit to the Department, within 60 days, a permit modification application under § 271.222 (relating to permit modification), with plans, designs and cross sections to modify its leachate treatment plan.

(b) The Department may approve permit modification applications under § 271.222 to extend, by 1 year at a time, the 3-year limitation for leachate transportation in § 273.273(a) (relating to leachate transportation), if the following apply:

- (1) The applicant complies with § 273.162(b) (relating to leachate treatment plan).
- (2) The applicant has obtained the necessary permits to construct and operate a leachate treatment system under § 273.272 (relating to basic treatment methods).
- (3) Leachate transportation from the facility has not caused or contributed to surface water or groundwater pollution.
- (4) The applicant has a valid contract for the treatment of leachate at an offsite treatment facility for the 1 year term of the proposed permit modification.
- (5) The offsite treatment facility to which leachate would be transported is operating in compliance with The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and regulations promulgated thereunder, and is otherwise capable of accepting and treating leachate from the landfill.

(6) The landfill has a remaining permitted life, based on permitted capacity, of at least 3 years.

**PHASE II APPLICATION
REQUIREMENTS—CLOSURE PROVISIONS**

§ 273.192. Closure plan.

(a) The application shall contain a plan describing the activities that are proposed to occur in preparation for closure and after closure to ensure compliance with this chapter.

(b) The closure plan shall include:

(1) A plan for the decontamination and removal of equipment, structures and related material from the facility.

(2) An estimate of the year in which final closure will occur, including an explanation of the basis for the estimate.

(3) A description of the steps necessary for closure if the facility closes prematurely.

(4) A narrative description, including a schedule, of measures that are proposed to be carried out in preparation for closure and after closure at the facility, including measures relating to:

- (i) Water quality monitoring.
- (ii) Gas control and monitoring.
- (iii) Leachate collection and treatment.
- (iv) Erosion and sedimentation control.

(v) Revegetation and regrading, including maintenance of the final cover.

(vi) Access control, including maintenance of access control.

(5) A description of the means by which funds will be made available to cover the cost of postclosure operations, which shall include an assessment of projected postclosure maintenance costs, a description of how the necessary funds will be raised, a description of where the funds will be deposited, copies of relevant legal documents and a description of how the funds will be managed prior to closure.

(6) The name, address and telephone number at which the operator can be reached during the postclosure period.

§ 273.196. Recycling plan.

An application shall contain a plan for salvaging and recycling waste materials received at the facility for which recycling is cost effective, including proposed salvage areas, salvaging methods and anticipated markets for salvaged materials under § 273.331 (relating to salvaging of materials).

§ 273.197. Plan for recycled materials collection center.

An application shall include a plan consistent with § 273.332 (relating to recycled materials collection center).

**Subchapter C. OPERATING REQUIREMENTS
GENERAL PROVISIONS**

§ 273.201. Basic limitations.

(a) Except as provided in subsection (b), a person or municipality may not own or operate a municipal waste landfill unless the Department has first issued a permit to the person or municipality for the facility under this chapter.

(b) A person or municipality may conduct monitoring under § 273.116 (relating to groundwater quality description) without a permit from the Department if the Department has given written approval for the monitoring based on written plans that are consistent with this chapter. The monitoring information may be used for a permit application for the proposed facility.

(c) A person or municipality that operates a municipal waste landfill shall comply with the following:

(1) The act, this article and other applicable regulations promulgated under the act.

(2) The plans and specifications in the permit, the terms and conditions of the permit, the environmental protection acts, this title and orders issued by the Department.

(d) A person or municipality may not allow special handling waste or residual waste to be disposed at the facility unless the Department has specifically approved the disposal of the waste at the facility, in the permit, under Subchapter D (relating to additional application requirements for special handling and residual wastes).

(e) The operator may not allow explosive waste to be disposed at the facility.

(f) Hazardous waste subject to Article VII (relating to hazardous waste management), may not be disposed, processed or stored where a municipal waste landfill is operated.

(g) Except to the extent that leachate recirculation is allowed in the permit under § 273.162 (relating to leachate treatment plan), bulk or noncontainerized liquid waste may not be disposed at a municipal waste landfill. Containers holding free liquids may not be disposed unless the container is less than 1 gallon in size, except as otherwise provided in the permit.

(h) Lead acid batteries may not be disposed at the facility.

(i) A person or municipality may not allow solid waste to be received, disposed or otherwise managed at the facility if the transportation to, or processing or management at, the facility would violate applicable laws in effect in the county or state in which the waste was generated, or state or local solid waste management plans in effect where the waste was generated.

(j) Loads composed primarily of leaf waste may not be disposed at the facility.

(k) The approved mitigation measures identified in the permit application shall be completed before a facility may accept waste unless a later date is authorized in writing by the Department for technical reasons.

(l) The following radioactive material controlled under specific or general license or order authorized by any Federal, State or other government agency may not be disposed at the facility, unless specifically exempted from disposal restrictions by an applicable State or Federal statute or regulation:

- (1) Naturally occurring and accelerator produced radioactive material.
- (2) Byproduct material.
- (3) Source material.
- (4) Special nuclear material.
- (5) Transuranic radioactive material.
- (6) Low-level radioactive waste.

(m) The following radioactive material may not be disposed at the facility, unless approved in writing by the Department, and the disposal does not endanger the environment, facility staff or public health and safety:

- (1) Short-lived radioactive material from a patient having undergone a medical procedure.
- (2) TENORM.
- (3) Consumer products containing radioactive material.

(n) The limitations in subsections (l) and (m) do not apply to radioactive material as found in the undisturbed natural environment of this Commonwealth.

§ 273.202. Areas where municipal waste landfills are prohibited.

(a) Except as provided in subsections (b) and (c), a municipal waste landfill may not be operated as follows:

(1) *Floodplain.* In the 100-year floodplain of waters of this Commonwealth.

(2) *Wetland.*

(i) In or within 300 feet of an exceptional value wetland as defined in § 105.17 (relating to wetlands).

(ii) For a new municipal waste landfill permitted on or after December 23, 2000, in or within 100 feet of a wetland other than an exceptional value wetland, unless storage, processing and disposal will not occur within that distance and one of the following applies:

(A) If the operation is in or along the wetland, the operator has received a permit from the Department under Chapter 105 (relating to dam safety and waterway management).

(B) If the operation is not in or along the wetland, no adverse hydrologic or water quality impacts will result.

(3) *Coal—existing facility.* For an area permitted as a municipal waste landfill between April 9, 1988, and December 23, 2000, in coal bearing areas underlain by recoverable or mineable coals, unless the operator of the facility demonstrates and the Department finds, in writing, that the operator owns the underlying coal, or has entered an agreement with the owner of the coal to provide support.

(4) *Coal—expansion.* For an expansion of a municipal waste landfill permitted between April 9, 1988, and December 23, 2000, in coal bearing areas underlain by recoverable or mineable coals, unless one of the following is met:

- (i) The applicant owns the underlying coal.
- (ii) The following requirements are met:

(A) The applicant owned or entered into an enforceable option contract to purchase the land on which the expansion would operate on or before December 23, 2000, and still holds the option rights, still owns the land or owns the land pursuant to the option rights contract when the permit expansion is issued.

(B) Coal providing support for the expansion area will not be mined as long as waste remains on the site, as demonstrated under § 273.120 (relating to mineral deposits information).

(5) *Coal—new landfill.* For a new municipal waste landfill permitted on or after December 23, 2000, in coal bearing areas underlain by recoverable or mineable coal, unless the permittee owns the underlying coal.

(6) *Valley, ravine or head of hollow.* In a valley, ravine or head of hollow where the operation would result in the elimination, pollution or destruction of a portion of a perennial stream, except that rechanneling may be allowed as provided in Chapter 105 (relating to dam safety and waterway management).

(7) *Limestone or carbonate formation.* In areas underlain by limestone or carbonate formations where the formations are greater than 5 feet thick and present at the topmost geologic unit. These areas include areas mapped by the Pennsylvania Geological Survey as under-

lain by these formations, unless competent geologic studies demonstrate the absence of limestone and carbonate formations under the site.

(8) *Occupied dwelling—existing facility.* Except as provided in paragraphs (9) and (10), a municipal waste landfill or a permitted noncaptive (Class I) residual waste landfill that was operating and not closed as of December 23, 2000, that converts to a municipal waste landfill may not be operated within 300 feet measured horizontally from an occupied dwelling, unless the current owner of the dwelling has provided a written waiver consenting to the facility being closer than 300 feet. Except as provided in paragraphs (9) and (10), the disposal area of the landfill may not be within 500 feet measured horizontally from an occupied dwelling unless the current owner of the dwelling has provided a written waiver consenting to the disposal area being closer than 500 feet. A waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner.

(9) *Occupied dwelling—expansion.* For a permitted municipal waste landfill that was operating and not closed as of December 23, 2000, or a permitted noncaptive (Class I) residual waste landfill that was operating and not closed as of December 23, 2000, that converts to a municipal waste landfill, an expansion permitted on or after December 23, 2000, may not be operated within 900 feet measured horizontally from an occupied dwelling, unless one or both of the following conditions are met:

(i) The owner of the dwelling has provided a written waiver consenting to the facility or disposal area being closer than 900 feet. A waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(ii) The applicant owned or entered into an enforceable option contract to purchase the land on which the expansion would operate on or before December 23, 2000, and still holds the option rights, still owns the land or owns the land pursuant to the option rights contract when the permit expansion is issued. Even if the requirement of this subparagraph is met, the expansion may not be operated within 300 feet measured horizontally from an occupied dwelling and the disposal area may not be within 500 feet measured horizontally from an occupied dwelling.

(10) *Occupied dwelling—new landfill.* A new municipal waste landfill permitted on or after December 23, 2000, may not be operated within 900 feet measured horizontally from an occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to the facility being closer than 900 feet. A waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner. A closed landfill that submits an application to reopen and expand shall also be subject to this paragraph.

(11) *Occupied dwelling—access road.* Notwithstanding the prohibitions in paragraphs (9) and (10), an access road to a municipal waste landfill may not be operated within 300 feet measured horizontally from an occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to the access road being closer than 300 feet. A waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(12) *Perennial stream.* Within 100 feet of a perennial stream unless storage, processing and disposal will not

occur within that distance and no adverse hydrologic or water quality impacts will result.

(13) *Property line.* Within 100 feet of a property line, unless one of the following applies:

(i) Actual disposal will not occur within 100 feet of a property line.

(ii) The current owner has provided a written consent to the facility being closer than 100 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner.

(14) *Airport—FAA certified.* For areas permitted on or after April 9, 1988, and before January 25, 1997:

(i) Within 10,000 feet—or 3,048 meters—of a runway that is or will be used by turbine-powered aircraft at a Federal Aviation Administration (FAA) certified airport during the term of the permit.

(ii) Within 5,000 feet—or 1,524 meters—of a runway that is or will be used by piston-type aircraft at an FAA-certified airport during the life of disposal operations under the permit.

(15) *Airport.* Except for areas that were permitted prior to January 25, 1997, a municipal waste landfill may not be operated as follows:

(i) Within 10,000 feet—or 3,048 meters—of an airport runway that is or will be used by turbine-powered aircraft during the life of disposal operations under the permit.

(ii) Within 5,000 feet—or 1,524 meters—of an airport runway that is or will be used by piston-type aircraft during the life of disposal operations under the permit.

(16) *Airport—navigable airspace.* The following relate to airports:

(i) *Conical area.* For areas permitted prior to December 23, 2000, within the conical area at 14 CFR Part 77 (relating to objects affecting navigable airspace) for runway flight paths that are or will be used by turbine-powered or piston-type aircraft during the life of disposal operations under the permit.

(ii) *Obstruction.* For areas permitted on or after December 23, 2000, in a manner in which any portion of the landfill would be an obstruction to air navigation under 14 CFR § 77.23(a)(5) (relating to standards for determining obstructions).

(17) *Water source.* Within 1/4-mile upgradient, and within 300 feet or 91.4 meters downgradient, of a private or public water source for disposal, processing and storage areas, except that the Department may waive or modify these isolation distances if the operator demonstrates and the Department finds, in writing, that the following conditions have been met:

(i) The owners of the public and private water sources in the isolation area have consented, in writing, to the location of the proposed facility.

(ii) The operator and each water source owner have agreed, in writing, that the applicant will construct and maintain at the operator's expense a permanent alternative water supply of like quantity and quality at no additional cost to the water source owner if the existing source is adversely affected by the facility.

(iii) The applicant has demonstrated that a replacement water source is technically and economically feasible and readily available for every public or private water source in the isolation area.

(18) *School, park or playground.*

(i) For a municipal waste landfill permit issued on or after September 26, 1988, except an expansion of a municipal waste landfill permitted prior to September 26, 1988, within 300 yards of the following:

(A) A building which is owned by a school district or school and used for instructional purposes.

(B) A park.

(C) A playground.

(ii) The current property owner of a school building, park or playground may waive the 300-yard prohibition by signing a written waiver. Upon receipt of the waiver, the Department will waive the 300-yard prohibition and will not use the prohibition as the basis for the denial of a new permit.

(b) The isolation distances identified in subsection (a)(2), (3), (6)—(8), (11)—(14), (16)(i) and (17) do not apply to areas that were permitted as a municipal waste landfill prior to April 9, 1988, and included in a municipal waste landfill permit issued between April 9, 1988, and December 23, 2000, as long as the permit did not become void under § 271.211(e) (relating to term of permits).

(c) The isolation distances identified in subsection (a) do not apply for purposes of conducting postclosure activities for areas permitted as a municipal waste landfill prior to December 23, 2000.

(d) Except as provided in subsection (e), this section does not apply to features that may come into existence after the date of the first newspaper notice of the filing of a permit application under § 271.141 (relating to public notice by applicant).

(e) This section does not apply to features that may come into existence after the date of the first newspaper notice under this subsection if the following apply:

(1) The person or municipality publishes a notice of intent to file an application for a municipal waste landfill permit. The notice, which is separate from the newspaper notice required by § 271.141, shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the facility is proposed to be located. The notice shall include a brief description of the location and proposed operation of the facility.

(2) The person or municipality files an administratively complete application under § 271.202 (relating to receipt of application and completeness review) with the Department within 1 year from the date of the first newspaper notice under this subsection.

§ 273.203. Certification.

(a) The operator shall submit a certification by a registered professional engineer on forms provided by the Department upon completion of each major construction activity identified in the permit for each phase or sequence of construction at the facility. Major construction activities include:

(1) Construction of the groundwater monitoring system.

(2) Construction of the subbase.

(3) Construction of the secondary liner.

(4) Construction of the leachate detection zone.

(5) Construction of the primary liner.

(6) Construction of the protective cover and the collection system within the protective cover.

(7) Construction of a leachate treatment facility.

(8) Construction of sedimentation pond.

(9) Construction of the landfill gas extraction system.

(10) Closure.

(11) Final closure.

(b) The certification shall describe construction activity and the phase or sequence of construction being certified, using drawings and plans where appropriate. The certification shall state that the actual construction was observed by the engineer or persons under his direct supervision, and that the supervision was carried out in a manner that is consistent with the approved permit.

(c) Upon completion of each construction activity described in subsection (a) other than construction of a leachate treatment facility, the operator shall notify the Department that the construction activity is ready for inspection. No waste may be disposed in the area subject to the inspection until the Department has conducted an inspection and has transmitted its written approval to the permittee indicating that construction was done according to the permit.

(d) The closure and final closure activities will not be deemed complete until the Department has certified completion of closure and final closure activities.

DAILY OPERATIONS

§ 273.211. Signs and markers.

(a) A person or municipality that operates a municipal waste landfill shall identify the facility and the recycling drop-off center required under § 273.332 (relating to recycled materials collection center) for the duration of operations by posting and maintaining a sign which is clearly visible and can be easily seen and read at the junction of each access road and public road. The sign shall be constructed of a durable, weather-resistant material. The sign shall show the name, business address and telephone number of the person or municipality that operates the facility, the operating hours of the facility and the number of the current permit authorizing operation of the facility.

(b) Permanent physical markers for the grid coordinate system and permit area markers shall be:

(1) Posted and maintained for the duration of the operations to which they pertain.

(2) Clearly visible, readable and uniform throughout the operation.

(3) Permanently fixed and made of a durable material.

(c) The perimeter of the site shall be clearly marked before the beginning of operations. The perimeter of a disposal area shall be clearly marked before the beginning of municipal waste disposal within that area.

(d) The permanent physical markers for the grid coordinate system shall be installed at the locations set forth in the permit, prior to the beginning of operations. The base line of the grid system shall be marked with two permanent monuments that show elevation.

§ 273.212. Access control.

(a) A gate or other barrier shall be maintained at potential vehicular access points to block unauthorized access to the site when an attendant is not on duty.

(b) The operator shall maintain a fence or other suitable barrier around the site, including impoundments,

leachate collection and treatment systems and gas processing facilities, sufficient to prevent unauthorized access.

(c) Access to the site shall be limited to those times when an attendant is on duty.

§ 273.213. Access roads.

(a) An access road shall be designed, constructed and maintained to prevent erosion to the maximum extent possible and to prevent contributions of sediment to streams or runoff outside the site.

(b) A crossing of a perennial or intermittent stream or a wetland shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachments or water obstructions shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) An access road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 25-year, 24-hour precipitation event. For roads that are used or in existence for more than 30 days, the drainage system shall include sloped or crowned road surfaces, cross drains or culverts, stabilized ditches, erosion resistant surfacing, sediment traps and other appropriate measures as required by § 273.242 (relating to soil erosion and sedimentation control).

(d) An access road shall be paved or surfaced with asphalt, gravel, cinders or other equivalent material approved by the Department in the permit. An access road shall be capable of withstanding the load limits projected by the applicant under § 273.134 (relating to plan for access roads). The maximum sustained grade of an access road may not exceed 12%.

(e) For roads leading to the waste disposal area, a landfill shall maintain a minimum cartway width of one of the following:

(1) Twenty-two feet for two-way traffic.

(2) Twelve feet for one-way traffic with pull-off intervals every 100 yards or a greater distance where there is a clear view of approaching vehicles.

(f) An access road negotiable by loaded collection vehicles shall be provided from the entrance gate of the facility to each unloading area. An access road shall also be provided to each treatment facility, impoundment and groundwater monitoring point. Other monitoring points shall be readily accessible.

(g) Disturbed areas adjacent to a road shall be vegetated or otherwise stabilized to prevent erosion.

(h) An access road shall be maintained to control dust and to prevent or control the tracking of mud on and off the site.

(i) An access road shall be designed, constructed and maintained to allow the orderly egress and ingress of vehicular traffic when the facility is in operation, including during inclement weather.

§ 273.214. Measurement and inspection of waste.

(a) An operator of a municipal waste landfill that has received, is receiving or will receive 30,000 or more cubic yards of solid waste in a calendar year shall weigh solid waste when it is received. The scale used to weigh solid waste shall conform to 3 Pa.C.S. Chapter 41 (relating to the Consolidated Weights and Measures Act) and 70 Pa. Code Part I (relating to general provisions). The

operator of the scale shall be a licensed public weighmaster under 3 Pa.C.S. Chapter 41 and 70 Pa. Code Part I.

(b) The operator of a facility that is not required by subsection (a) to weigh waste when it is received shall accurately measure waste by volume or weight prior to unloading.

(c) The operator of a facility shall inspect and monitor incoming waste to insure that the receipt of waste is consistent with this article.

§ 273.215. Equipment.

(a) The operator shall maintain on the site equipment necessary for the operation of the facility in accordance with the permit. The equipment shall be maintained in an operable condition.

(b) If a breakdown of the operator's equipment occurs, the operator shall utilize standby equipment as necessary to comply with the act, the environmental protection acts, this subchapter and permit conditions.

§ 273.216. Unloading and compaction.

(a) An attendant or clearly marked signs shall direct vehicles to the unloading area.

(b) The operator shall ensure that collection vehicles unload waste promptly in unloading areas.

(c) Solid waste shall be spread and compacted as approved by the Department as part of the permit.

§ 273.217. Air resources protection.

(a) The operator shall implement fugitive air contaminant control measures and otherwise prevent and control air pollution in accordance with the Air Pollution Control Act (35 P.S. §§ 4001—4014), Article III (relating to air resources) and § 273.218 (relating to nuisance minimization and control). Minimization and control measures shall include the following:

(1) Ensuring that operation of the facility will not cause or contribute to exceeding ambient air quality standards under § 131.3 (relating to ambient air quality standards).

(2) Ensuring that no open burning occurs at the facility.

(3) Minimizing the generation of fugitive dust emissions from the facility.

(b) The operator shall comply with the terms and conditions of an air quality plan approval and air quality operating permit issued to the facility under Chapter 127 (relating to construction, modification, reactivation and operation of sources).

§ 273.218. Nuisance minimization and control.

(a) *Vectors.* An operator may not cause or allow the attraction, harborage or breeding of vectors.

(b) *Odors.*

(1) An operator shall implement the plan approved under § 273.136 (relating to nuisance minimization and control plan) to minimize and control public nuisances from odors. If the Department determines during operation of the facility that the plan is inadequate to minimize or control public nuisances, the Department may modify the plan or require the operator to modify the plan and obtain Department approval.

(2) An operator shall perform regular, frequent and comprehensive site inspections to evaluate the effectiveness of cover, capping, gas collection and destruction,

waste acceptance and all other waste management practices in reducing the potential for offsite odor creation.

(3) An operator shall promptly address and correct problems and deficiencies discovered in the course of inspections performed under paragraph (2).

(c) *Other.* An operator shall implement the plan approved under § 273.136 to minimize and control other conditions that are harmful to the environment or public health, or which create safety hazards, odors, dust, noise, unsightliness and other public nuisances.

§ 273.221. Daily volume.

(a) A person or municipality operating a municipal waste landfill may not receive solid waste at the landfill in excess of the maximum or average daily volume approved in the permit.

(b) The average daily volume is a limit on the volume of solid waste that is permitted to be received at the facility, and shall be computed quarterly by averaging the total volume received over the quarter.

§ 273.223. Radiation monitoring and response.

(a) An operator shall implement the action plan approved under § 273.140a (relating to radiation protection action plan).

(b) An operator shall monitor incoming waste in accordance with the Department's "Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document Number 250-3100-001 or in a manner at least as protective of the environment, facility staff and public health and safety. Monitoring shall meet the requirements of this section and the facility's approved radiation protection action plan.

(c) Radiation detector elements shall be as close as practical to the waste load and in an appropriate geometry to monitor the waste. The radiation monitoring system shall be set to alarm at a level no higher than 10 microrentgen per hour ($\mu\text{R/hr}$) above the average background at the facility when any of the radiation detector elements is exposed to a cesium-137 gamma radiation field. Radiation detector elements shall be shielded to maintain the average background below 10 $\mu\text{R/hr}$. If capable of energy discrimination, the radiation monitoring system shall be set to detect gamma rays of a 50 kiloelectron volt (keV) energy and higher.

(d) An operator shall have portable radiation monitors capable of determining the radiation dose rate and presence of contamination on a vehicle that has caused an alarm. Upon a confirmed exceedance of the alarm level in subsection (c), a radiological survey of the vehicle shall be performed.

(e) An operator shall notify the Department immediately and isolate the vehicle when radiation dose rates of 20 $\mu\text{Sv}^{\text{h}^{-1}}$ (2 $\text{mrem}^{\text{h}^{-1}}$) or greater are detected in the cab of a vehicle, 500 $\mu\text{Sv}^{\text{h}^{-1}}$ (50 $\text{mrem}^{\text{h}^{-1}}$) or greater are detected from any other surface, or contamination is detected on the outside of the vehicle.

(f) Monitoring equipment shall be calibrated at a frequency specified by the manufacturer, but not less than once a year.

(g) If radioactive material is detected, the vehicle containing the radioactive material may not leave the facility without written Department approval and an authorized United States Department of Transportation exemption form.

COVER AND REVEGETATION

§ 273.231. (Reserved).

§ 273.232. Daily cover.

(a) Except as provided in subsection (b), a uniform cover of the approved daily cover material shall be placed on exposed solid waste at the end of each working day or at the end of every 24 hours, whichever interval is less.

(b) The composition of the daily cover material shall meet the following performance standards. The daily cover shall:

- (1) Prevent vectors, odors, blowing litter and other nuisances.
- (2) Cover solid waste after it is placed without change in its properties and without regard to weather.
- (3) Be capable of allowing loaded vehicles to successfully maneuver over it after placement.
- (4) Be capable of controlling fires.
- (5) Be consistent with the waste acceptance plan for the facility.

(c) A 5-day supply of cover material shall be maintained on the site.

(d) Intermediate slopes constructed during daily landfilling activities may not exceed 50%.

§ 273.233. Intermediate cover and slopes.

(a) A uniform and compacted intermediate cover shall be placed within 7 days of waste disposal on the following:

- (1) Each partial lift for which the operator intends to place no additional waste for 6 months.
- (2) Each partial or completed lift that represents final permitted elevations for that part of the facility.

(b) The composition of the intermediate cover material shall meet the following performance standards. The intermediate cover shall:

- (1) Prevent vectors, odors, blowing litter and other nuisances.
- (2) Cover solid waste after it is placed without change in its properties and without regard to weather.
- (3) Be capable of allowing loaded vehicles to successfully maneuver over it after placement.
- (4) Be capable of controlling fires.
- (5) Control infiltration of precipitation and erosion and sedimentation.

(6) Support the germination and propagation of vegetative cover as required by §§ 273.235 and 273.236 (relating to revegetation; and standards for successful revegetation) unless vegetative cover is not necessary to control infiltration of precipitation and erosion and sedimentation.

(7) Be consistent with the waste acceptance plan for the facility.

(c) Unless alternative design requirements to meet the performance standards in subsection (b) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), intermediate cover shall meet the following design requirements:

- (1) If soil or soil-like material is used, the layer shall be at least 12 inches in thickness.

(2) If soil or soil-like material is used, the layer shall be uniformly graded.

(d) A 5-day supply of cover material shall be maintained on the site.

(e) If intermediate cover requires vegetation it shall be established within 30 days.

(f) Slopes constructed during daily landfilling and intermediate cover activities may not exceed 50%.

§ 273.234. Final cover and grading.

(a) The operator shall provide final cover in the following manner:

(1) A cap shall be placed over the entire surface of each final lift. The following performance standards for the cap shall be met:

(i) The cap shall have a permeability less than or equal to the permeability of the primary liner or a permeability no greater than 1×10^{-7} cm/sec, whichever is less.

(ii) The cap shall be resistant to physical and chemical failure.

(iii) The cap shall cover all areas where waste is disposed.

(2) A drainage layer capable of transmitting flow and preventing erosion of the soil layer shall be placed over the cap.

(3) A uniform and compacted layer of soil at least 2 feet in thickness shall be placed over the drainage layer.

(b) The operator shall place final cover within 1 year after disposal in the final lift ceases or as soon thereafter as weather permits, unless the Department, in the permit, allows a later period based on a demonstration that a later period is necessary to protect the final cover from differential settlement of waste at the facility. The Department will not allow a later period unless, at a minimum, delayed installation will not cause or allow violations of this article, the act or the environmental protection acts.

(c) Unless alternative design requirements to meet the performance standards in subsection (a)(1)(i)—(iii) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the cap shall meet the design requirements set forth for caps in Table 1 in § 273.256(e) (relating to primary liner) which will not result in a permeability greater than that of the primary liner.

(d) The layer of material described in subsection (a)(3) shall meet the following performance standards. The layer shall:

(1) Prevent vectors, odors, blowing litter and other nuisances.

(2) Be capable of allowing loaded vehicles to successfully maneuver over it after placement.

(3) Be capable of controlling fires.

(4) Be capable of supporting the germination and propagation of vegetative cover as required by §§ 273.235 and 273.236 (relating to revegetation; and standards for successful revegetation).

(5) Ensure slope stability.

(e) Unless alternative design requirements to meet the performance standards in subsection (d) are approved as part of the permit under § 271.231 (relating to equivalent

lency review procedure), the layer of material described in subsection (a)(3) shall meet the following design requirements:

(1) The cover soil shall fall within the United States Department of Agriculture textural classes of sandy loam, loam, sandy clay loam, silty clay loam, loamy sand and silt loam as defined in the *Soil Survey Manual* published by the United States Department of Agriculture, Soil Conservation Service (available from the Department or the Northeast National Technical Center of the Soil Conservation Service, 160 E. 7th Street, Chester, Pennsylvania 19103-6092).

(2) At least 40% by weight of the cover soil shall be capable of passing through a 2 millimeter, no. 10 mesh sieve.

(f) The grade of final slopes shall be designed, installed and maintained to:

(1) Ensure permanent slope stability.

(2) Control erosion due to rapid water velocity and other factors.

(3) Allow compaction, seeding and revegetation of cover material placed on the slopes.

(4) Ensure minimal percolation of precipitation and surface runoff into the disposal area.

(g) Unless the Department authorizes a different slope design in the permit based on a demonstration that the different design can meet the requirements of subsection (f), slopes shall be designed, installed and maintained as follows:

(1) The grade of the final surface of the facility may not be less than 3%.

(2) If the Department approves final grades of more than 15%:

(i) The operator shall construct a horizontal terrace at least 15 feet wide on the slope for every 25 feet maximum rise in elevations on the slope. The terrace width shall be measured as the horizontal distance between slope segments.

(ii) The gradient of the terrace shall be 5% into the landfill.

(iii) Drainage ditches shall be constructed on each horizontal terrace to convey flows.

(3) An operator may not leave final slopes that have a grade exceeding 33%, including slopes between benched terraces.

WATER QUALITY PROTECTION

§ 273.241. General requirements.

(a) The operator may not cause or allow a point or nonpoint source discharge of pollution from or on the facility to surface waters of this Commonwealth.

(b) A municipal waste landfill shall be operated to prevent and control surface and groundwater pollution. An operator shall operate and maintain necessary surface and groundwater treatment facilities until surface or groundwater pollution from the facility has been permanently abated.

(c) The operator may not cause or allow water pollution within or outside the site from operation of the facility.

§ 273.245. Water supply replacement.

(a) A person or municipality operating a municipal waste landfill which adversely affects a water supply by

degradation, pollution or other means shall restore or replace the affected water supply with an alternate source that is of like quantity and quality to the original supply at no additional cost to the owner. For purposes of this section, the term "water supply" includes existing or currently designated or currently planned sources of water or facilities or systems for the supply of water for human consumption or for agricultural, commercial, industrial or other legitimate use, including the uses protected by Chapter 93 (relating to water quality standards).

(b) A temporary water supply shall be provided as soon as practicable but not later than 48 hours after one of the following:

(1) Receipt of information showing that the operator is responsible for adversely affecting the water supply.

(2) Receipt of notice from the Department that the operator is responsible for adversely affecting the water supply.

(c) A permanent water supply shall be provided as soon as practicable but not later than 90 days after one of the following:

(1) Receipt of information showing that the operator is responsible for adversely affecting the water supply.

(2) Receipt of notice from the Department that the operator is responsible for adversely affecting the water supply.

(d) Permanent water supplies include development of a new well with a distribution system, interconnection with a public water supply, or extension of a private water supply, but do not include provision of bottled water or a water tank supplied by a bulk water hauling system, which are temporary water supplies.

LINER SYSTEM

§ 273.251. Scope and requirements.

(a) A person or municipality shall design, construct, operate and maintain a liner system for disposal areas of a municipal waste landfill or components of it under this section and §§ 273.252—273.260 (relating to liner system) if one of the following applies:

(1) The person or municipality receives a permit to operate a municipal waste landfill after April 9, 1988 including a permit that results in an expansion of a facility permitted prior to April 9, 1988.

(2) The person or municipality disposes of waste on a permitted or unpermitted component thereof where waste was not disposed prior to April 9, 1988.

(b) A liner system shall consist of the following elements:

(1) Subbase, which is the prepared layer of soil or earthen materials upon which the remainder of the liner system is constructed.

(2) Secondary liner, which is a continuous layer of synthetic materials or remolded clay placed on the subbase.

(3) Leachate detection zone, which is the prepared layer placed on top of the secondary liner and upon which the primary liner is placed, and in which a leachate detection system is located.

(4) Primary liner, which is a continuous layer of synthetic materials placed on the leachate detection zone.

(5) Protective cover and leachate collection zone, which is a prepared layer placed over the primary liner in which a leachate collection system is located.

(c) Either the primary or the secondary liner shall be constructed as a composite liner. For a permit issued under this article prior to December 23, 2000, this requirement does not apply until December 24, 2001.

§ 273.252. General limitations.

(a) The bottom of the subbase of the liner system cannot be in contact with the seasonal high water table or perched water table without the use of groundwater pumping systems.

(1) Soil mottling may indicate the presence of a seasonal high water table.

(2) Drainage systems may be utilized to prevent contact between the bottom of the subbase of the liner system and the seasonal high water table or perched water table. The operator may not use a drainage system if the system is likely to adversely affect the quality or quantity of water provided by a public or private water supply, even if a replacement supply is available under § 273.245 (relating to water supply replacement). The drainage system shall be limited to drain tile, piping, french drains or equivalent methods.

(b) At least 8 feet shall be maintained between the bottom of the subbase of the liner system and the regional groundwater table in an unconfined aquifer. The regional groundwater table may not be artificially lowered.

(c) In a confined aquifer, at least 8 feet shall be maintained between the bottom of the subbase of the liner system and the top of the confining layer or the shallowest level below the bottom of the subbase where groundwater occurs as a result of upward leakage from natural or preexisting causes. The integrity of the confining layer may not be compromised by excavation.

(d) If the approved design plans provide for the placement of additional adjacent liner:

(1) Waste may not be placed within 25 feet of an edge of the liner.

(2) The edge of the liner shall be protected by soil cover, or another material approved in the permit, until additional liner is added.

(3) A lined berm at least 4 feet high shall be constructed and maintained to prevent the lateral escape of leachate.

(4) Adequate spacing shall be maintained on the inside of the berm to collect stormwater and sediment.

(e) If the approved design plans do not provide for the placement of additional adjacent liner, waste may not be placed within 15 feet of the inside top of the lined perimeter berm.

(f) A lined perimeter berm at least 4 feet high shall be constructed and maintained along the edge of the lined disposal area to prevent the lateral escape of leachate.

(g) The edge of the liner shall be clearly marked.

§ 273.253. Subbase.

(a) The subbase shall meet the following performance standards. The subbase shall:

(1) Bear the weight of the liner system, waste, waste cover material and equipment operating on the facility without causing or allowing a failure of the liner system.

(2) Accommodate potential settlement without damage to the liner system.

(b) Unless alternative design requirements to meet the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the subbase shall meet the following design requirements. The subbase shall:

(1) Be at least 6 inches thick and compacted to a standard proctor density of at least 95%.

(2) Be no more permeable than 1×10^{-5} cm./sec., based on laboratory and field testing unless the clay component of a composite liner is designed and constructed directly above the subbase.

(3) Be hard, uniform, smooth and free of debris, rock, plant materials and other foreign material.

(4) Have a postsettlement slope of at least 2% and no more than 33%.

§ 273.254. Secondary liner.

(a) *Performance standards.* The secondary liner shall meet the following requirements:

(1) It shall prevent the migration of leachate through the liner to the greatest degree that is technologically possible.

(2) The effectiveness of it in preventing the migration of leachate may not be adversely affected by the physical or chemical characteristics of solid waste, solid waste constituents or leachate from the facility.

(3) It shall be resistant to physical failure, chemical failure and other failure from the sources identified under § 273.161(d) (relating to liner system and leachate control plan).

(b) *Alternative design requirements.* Unless alternative design requirements to meet the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the secondary liner shall meet, at a minimum, the requirements of the table in § 273.256(e) (relating to primary liner).

(c) *Requirements.* A secondary liner shall:

(1) Be no more permeable than 1×10^{-7} cm./sec. based on laboratory and field testing.

(2) Be installed according to manufacturer's specifications under the supervision of an authorized representative of the manufacturer if the liner is synthetic. An approved quality assurance and quality control plan shall be implemented in the field during the installation of the liner.

(3) Be designed, installed and maintained according to a quality assurance and quality control plan approved by the Department if the liner is remolded clay.

(4) Be inspected for uniformity, damage and imperfections during construction and installation.

(d) *Compacted lifts.* Secondary liners made of clay, bentonite and bentonite-like materials shall be constructed in compacted lifts not exceeding 6 inches in depth unless the operator submits data from a field demonstration validating the suitability of compacted lifts greater than 6 inches. A lift shall be scarified before placement of the next lift.

(e) *Composite secondary liner.*

(1) If the operator does not design, construct, operate and maintain a composite primary liner, the operator

shall design, construct, operate and maintain a composite secondary liner which has the following components:

(i) An upper component made of a manufactured geosynthetic liner that meets the requirements of this section independently of the composite component.

(ii) A composite component made of earthen material that meets the requirements of this section independently of the upper component, except that the composite component may be no more permeable than 1.0×10^{-7} cm./sec. based on laboratory and field testing and, at a minimum, meets the requirements of the table in § 273.256(e) (relating to primary liner).

(2) The two components of the composite liner shall be designed, constructed and maintained to provide a compression connection, or direct, continuous, and uniform contact, between them.

(3) The use of a composite secondary liner does not relieve the operator of responsibility for a separate primary liner under § 273.256.

(f) *Natural attenuation of leachate prohibited.* A facility or a component thereof that is subject to this chapter may not have a secondary liner based upon natural attenuation of leachate.

§ 273.255. Leachate detection zone.

(a) The leachate detection zone shall meet the following performance standards. The leachate detection zone shall:

(1) Rapidly detect and collect liquid entering the leachate detection zone, and rapidly transmit the liquid to the leachate treatment system.

(2) Withstand chemical attack from waste or leachate.

(3) Withstand anticipated loads, stresses and disturbances from overlying waste, waste cover materials and equipment operation.

(4) Function without clogging.

(5) Prevent the liner from cracking, tearing, stretching or otherwise losing its physical integrity.

(6) Cover the bottom and sidewalls of the facility.

(b) Unless alternative design requirements to meet the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the leachate detection zone of a liner system shall meet the following design requirements:

(1) Be at least 12 inches thick.

(2) Contain no material exceeding 0.5 inches in particle size.

(3) Create a flow zone between the secondary liner and the primary liner equal to or more permeable than 1×10^{-2} cm./sec. based on a laboratory testing and, when required by the Department, field testing.

(4) Contain a perforated piping system capable of detecting and intercepting liquid within the leachate detection zone and conveying the liquid to a collection sump for storage, processing or disposal. The sump shall be separate from the leachate collection sump, and shall be of a sufficient size to transmit leachate that is generated.

(5) The piping system shall also meet the following:

(i) The slope, size and spacing of the piping system shall assure that liquids drain from the leachate detection zone.

(ii) The pipes shall be installed primarily perpendicular to the flow and shall have a minimum postsettlement grade of at least 2%.

(iii) The minimum diameter of the perforated pipe shall be 4 inches with a wall thickness of Schedule-80 or greater, as specified by ASTM, or equivalent.

(iv) The pipes shall be cleaned and maintained as necessary.

(6) The leachate detection zone shall have a minimum bottom slope of 2%.

(7) Contain stone or aggregates without sharp edges.

(c) The operator shall monitor the leachate detection zone weekly to determine whether liquid is flowing from the zone.

(d) If liquid is flowing from the leachate detection zone, the operator shall:

(1) Immediately notify the Department in writing.

(2) Estimate, on a weekly basis, the volume of liquid flowing from the zone.

(3) Sample and analyze the liquid, on a quarterly basis, for pH, specific conductivity, total organic carbon, chloride, total alkalinity, ammonia-nitrogen and chemical oxygen demand. The Department may also require sampling and analysis for other constituents expected to be found in the waste.

(4) Provide written copies of flow and analysis data to the Department.

(e) If leachate flow is greater than 100 gallons per acre of liner collection area per day or more than 10% of leachate generation, the operator shall:

(1) Submit to the Department within 30 days a plan for locating the source of leachate in the leachate detection zone, and for determining the severity and cause of leachate penetration.

(2) Implement the plan upon Department approval, and complete the plan in a reasonable time not to exceed 6 months.

(3) Submit to the Department within 45 days after completion of the plan a report containing the new data collected, analysis of the data and recommendations concerning a remedial plan.

(4) Conduct quarterly sampling and analysis for the parameters in § 273.284 (relating to sampling and analysis), and submit copies of the results of the analysis to the Department.

(f) If sampling results indicate the presence of constituents at concentrations that could result in degradation of groundwater, the operator shall:

(1) Submit to the Department a remedial plan for controlling the source of leachate in the leachate detection zone, and implement the plan upon Department approval.

(2) Submit to the Department a permit modification application under § 271.222 (relating to permit modification) for increased groundwater monitoring, giving consideration to monitoring frequency, number of wells and

other factors, and conduct increased groundwater monitoring upon Department approval of the application.

§ 273.256. Primary liner.

(a) *General.* The primary liner shall meet the following requirements:

(1) The primary liner shall prevent the migration of leachate through the liner to the greatest degree that is technologically possible.

(2) The effectiveness of the primary liner in preventing the migration of leachate may not be adversely affected by the physical or chemical characteristics of solid waste, solid waste constituents or leachate from the facility.

(3) The primary liner shall be resistant to physical failure, chemical failure and other failure from the properties identified in § 273.161(d) (relating to liner system and leachate control plan).

(b) *Alternative design standards.* Unless alternative design standards to meet the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the primary liner shall meet, at a minimum, the requirements of the table in subsection (e).

(c) *Requirements.* A primary liner shall:

(1) Be no more permeable than 1×10^{-7} cm./sec. based on laboratory and field testing.

(2) Be installed according to the manufacturer's specifications under the supervision of an authorized representative of the manufacturer. The approved quality control program shall be implemented in the field during the installation of the liner.

(3) Be inspected for uniformity, damage and imperfections during construction or installation.

(d) *Composite primary liner.*

(1) If the operator does not design, construct, operate and maintain a composite secondary liner, the operator shall design, construct, operate and maintain a composite primary liner which has the following components:

(i) An upper component made of a manufactured geosynthetic liner that meets the requirements of this section independently of the composite component.

(ii) A composite component made of earthen material that meets the requirements of this section independently of the upper component, except that the composite component shall be no more permeable than 1.0×10^{-7} cm./sec. based on laboratory and field testing and, at a minimum, meets the requirements of the table in subsection (e).

(2) The two components of the composite liner shall be designed, constructed and maintained to provide a compression connection, or direct, continuous, and uniform contact between them.

(3) Use of a composite primary liner does not relieve the operator of responsibility for a separate secondary liner under § 273.254.

(e) *Natural attenuation of leachate prohibited.* A facility or component thereof that is subject to this chapter may not have a primary liner based upon natural attenuation of leachate.

TABLE I
MINIMUM LINER DESIGN STANDARDS

<i>LINER MATERIAL</i>	<i>FUNCTION</i>	<i>MINIMUM FIELD THICKNESS (UNITS AS SPECIFIED)</i>	<i>LINER DENSITY (TESTS AS SPECIFIED)</i>	<i>REMARKS</i>
Geosynthetic	Primary or secondary liner	30 mil	NA	1. A greater thickness may be required depending upon the recommendations of the manufacturer. 2. HDPE liners shall be at least 60 mil.
Geosynthetic	Cap	30 mil	NA	1. A greater thickness may be required depending upon the recommendations of the manufacturer.
Natural & Remolded Clay	Secondary Liner, Composite component	2 feet 2 feet	$\geq 90\%^*$ $\geq 90\%^*$	1. Minimum of 30% fines by weight less than 0.074 mm particle size (# 200 sieve). 2. Plasticity index 10. 3. No coarse fragments greater than 3/4 inch in diameter.
Sodium Bentonite & Bentonite-like materials	Secondary Liner, Composite component	1 foot 1 foot	$\geq 90\%^*$ $\geq 90\%$	1. Minimum of 8% powdered sodium bentonite or manufacturer's recommendations, whichever is greater. 2. No coarse fragments greater than 3/4 inch in diameter. 3. No organic matter.
Geosynthetic clay liner (GCL)	Composite component	N/A	N/A	Minimum of 3/4 pound of powdered or granular sodium bentonite per square foot.

* Percentage is of maximum theoretical density when using Marshall method of design, and percentage of maximum when using Standard Proctor method of design (Pa. PTM No. 106, Method B).

§ 273.257. Protective cover.

(a) The protective cover shall meet the following performance standards. The protective cover shall:

(1) Protect the primary liner from physical damage from stresses and disturbances from overlying wastes, waste cover materials and equipment operation.

(2) Protect the leachate collection system within the protective cover from stresses and disturbances from overlying wastes, waste cover materials and equipment operation.

(3) Allow the continuous and free flow of leachate into the leachate collection system within the protective cover.

(4) Cover the bottom and sidewalls of the disposal area.

(b) Unless alternative design requirements to meet the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the protective cover shall meet the following design requirements. The protective cover shall be:

(1) Comprised of clean earth material that contains no aggregate, rocks, debris, plant material or other solid material larger than 1/2 inch in diameter, and no material with sharp edges.

(2) As permeable as or more permeable than, 1×10^{-2} cm./sec. based on field testing, and shall allow the free flow of liquids and leachate passing through or generated by solid waste.

(3) At least 18 inches in thickness.

§ 273.258. Leachate collection system within protective cover.

(a) The leachate collection system within the protective cover shall meet the following performance standards. The leachate collection system shall:

(1) Ensure that free flowing liquids and leachate will drain continuously from the protective cover to the leachate treatment system without ponding or accumulating on the liner.

(2) Ensure that the depth of leachate on or above the primary liner does not exceed 1 foot.

(3) Withstand chemical attack from leachate.

(4) Withstand anticipated loads, stresses and disturbances from overlying waste, waste cover materials and equipment operation.

(5) Function without clogging.

(6) Cover the bottom and sidewalls of the facility.

(b) Unless alternative design requirements to the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the leachate collection system within the protective cover shall comply with the following design requirements:

(1) The leachate collection system shall include a perforated piping system which is capable of intercepting free flowing liquids and leachate within the protective cover and conveying them to a collection sump for storage, processing or disposal. The collection sump shall be of sufficient size to transmit leachate that is generated and shall be capable of automatic and continuous functioning.

(2) The perforated piping system shall be sloped, sized and spaced to assure that free flowing liquids and leachate will drain continuously from the protective cover to the collection sump or point.

(3) The minimum diameter of the perforated pipes shall be 6 inches with a wall thickness of Schedule 80 or greater as specified by ASTM, or equivalent.

(4) The leachate collection system shall contain stones or aggregates.

(5) The pipes shall be installed primarily perpendicular to the flow and shall have a postsettlement grade of at least 2%.

(6) The leachate collection system shall be cleaned and maintained as necessary.

(7) The leachate collection system shall have a minimum bottom slope of 2%.

LEACHATE TREATMENT

§ 273.272. Basic treatment methods.

(a) Except as otherwise provided in this section, leachate shall be collected and handled by direct discharge into a permitted publicly-owned treatment works, following pretreatment, if pretreatment is required by Federal, State or local law or by discharge into another permitted treatment facility.

(b) Leachate may be collected and handled by onsite treatment and discharge into a receiving stream under a permit issued by the Department under The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and regulations thereunder, if the Department approves this method in a municipal waste landfill permit. This method will not be allowed unless, at a minimum, direct discharge into a publicly-owned treatment works or other permitted facility is not practicable.

(c) Leachate may be collected and handled by spray irrigation following treatment. This method will not be allowed unless, at a minimum:

(1) Discharge into a publicly-owned treatment works or other permitted treatment facility is not practicable.

(2) Discharge of treated leachate into a receiving stream in a manner consistent with The Clean Streams Law and regulations thereunder is not attainable.

(3) Spray irrigation will not cause groundwater pollution.

§ 273.274. Leachate recirculation.

(a) In conjunction with the treatment methods in §§ 273.272 and 273.273 (relating to basic treatment methods; and leachate transportation), recirculation of leachate may be utilized if the following exist:

(1) The area subject to leachate recirculation previously has been filled with solid waste.

(2) There is sufficient municipal waste capacity to absorb the leachate.

(3) The area subject to leachate recirculation is underlain by a leachate collection system.

(4) The leachate recirculation is conducted with an approved piping system located under the intermediate cover, and causes no odors, runoff or ponding.

(5) The leachate is not a hazardous waste.

(b) An alternate leachate recirculation method may be used if approved by the Department, if one of the liner systems installed at the facility is a composite liner.

§ 273.275. Leachate collection and storage.

(a) Impoundments or tanks for storing leachate before or during treatment shall be constructed under §§ 285.122—285.124 (relating to storage tanks; impoundments—general; and impoundments—failure).

(b) An onsite leachate storage system shall be part of each leachate treatment method used by the operator. The storage system shall contain impoundments or tanks for storage of leachate. The tanks or impoundments shall have sufficient storage capacity at least equal to the maximum expected production of leachate for any 30-day period for the life of the facility estimated under § 273.162 (relating to leachate treatment plan), or 250,000 gallons, whichever is greater. No more than 25% of the total leachate storage capacity may be used for flow equalization on a regular basis.

(c) The impoundments or tanks shall be aerated as necessary to prevent and control odors. Impoundments or tanks shall each have a capacity of at least 250,000 gallons, unless otherwise approved by the Department.

(d) The storage capacity of impoundments and tanks at a site shall be increased if additional storage is required prior to each major phase of construction and as otherwise necessary.

(e) Leachate storage capacity may not be considered to include leachate that may have collected in or on the liner system.

(f) Necessary collection and containment systems shall be installed prior to the deposition of solid waste at the site. The leachate treatment or handling system approved by the Department under § 273.162 shall be installed or ready for use prior to the storage or disposal of solid waste at the site.

(g) For a facility permitted after December 23, 2000, underground pipes used for the transport of leachate from the liner system to the leachate storage impoundments or tanks shall be equipped with secondary containment or comply with § 245.445 (relating to methods for release detection for piping). Secondary containment shall be designed, constructed and installed to direct any release to an area that can be inspected for leaks.

§ 273.276. Leachate analysis and sludge handling.

(a) Upon commencement of leachate flow from the facility, the operator shall sample and analyze the following:

(1) On a daily basis, the average flow rate and volume of leachate flowing from the landfill into the leachate storage and treatment system.

(2) On a quarterly basis, the chemical composition of leachate flowing into the leachate treatment system, including total alkalinity, specific conductance, chlorides, sulfates, total dissolved solids, chemical oxygen demand, metals and volatile organic analysis. The analysis shall be sufficient to determine the impact of leachate on the liner system, the effectiveness of the leachate treatment system, the need for modification of the groundwater monitoring system or the effluent limitations in an NPDES permit and the actual characteristics of leachate from the waste disposed at the facility. For the purpose of this quarterly analysis, the leachate sample shall be collected from the influent storage tank or impoundment and shall be representative of the average mixed influent leachate quality.

(b) Sludges resulting from the treatment of leachate may be disposed at the facility if the sludges are not hazardous under Article VII (relating to hazardous waste management).

§ 273.277. Departmental notice and remedial action.

The operator shall immediately notify the Department and describe remedial steps to be taken if:

(1) Operation of the treatment facilities in accordance with the approved plan cannot prevent violation of the terms of its permits, The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or regulations thereunder.

(2) The facility is generating a quality or quantity of leachate that exceeds the design capacity of the onsite pretreatment system.

(3) The contractual agreement for leachate treatment by an offsite treatment system is breached or expired.

(4) The quality or quantity of solid waste being disposed at the site changes from that set forth in the permit.

WATER QUALITY MONITORING

§ 273.281. General requirements.

(a) A person or municipality that operates a municipal waste landfill shall install, operate and maintain a monitoring system that can detect the entry of solid waste, solid waste constituents, leachate, contaminants or constituents of decomposition into the groundwater or surface water. The monitoring system shall comply with this section and §§ 273.282—273.288.

(b) A person may not construct, install or use a monitoring system for a municipal waste landfill until that system has first been approved by the Department in writing.

§ 273.282. Number, location and depth of monitoring points.

(a) The water quality monitoring system shall accurately characterize groundwater flow, groundwater chemistry and flow systems on the site and adjacent area. The system shall consist, at a minimum, of the following:

(1) At least one monitoring well at a point hydraulically upgradient from the disposal area in the direction of increasing static head that is capable of providing representative data of groundwater not affected by the facility, except when the facility occupies the most upgradient position in the flow system. In that case, sufficient downgradient monitoring wells shall be placed to determine the extent of adverse effects on groundwater from the facility.

(2) At least three monitoring wells at points hydraulically downgradient in the direction of decreasing static head from the area in which solid waste has been or will be disposed. In addition to three downgradient wells, the Department may allow one or more springs for monitoring points if the springs are hydraulically downgradient from the area in which solid waste has been or will be disposed, if the springs are developed and protected in a manner approved by the Department, and if the springs otherwise meet the requirements of this subchapter.

(3) A leachate detection system for the disposal area, as required by §§ 273.251 and 273.255 (relating to scope and requirements; and leachate detection zone).

(4) A leachate collection system for the permitted disposal area, as required by § 273.251 and § 273.258 (relating to leachate collection system within protective cover).

(5) Surface water monitoring points approved by the Department.

(b) The upgradient and downgradient monitoring wells shall be:

(1) Sufficient in number, location and depth to be representative of water quality.

(2) Located so that it does not interfere with routine facility operations.

(3) Located within 200 feet of the permitted disposal area and located at the points of compliance.

(c) In addition to the requirements of subsection (b), upgradient monitoring wells shall be located so that they will not be affected by adverse effects on groundwater from the disposal area.

(d) In addition to the requirements of subsection (b), downgradient monitoring wells shall be located so that they will provide early detection of adverse effects on groundwater from the disposal area.

(e) A well drilled under this section shall be drilled by drillers licensed under the Water Well Drillers License Act (32 P. S. §§ 645.1—645.13).

(f) The well materials shall be decontaminated prior to installation.

§ 273.283. Standards for wells and casing of wells.

(a) A monitoring well shall be constructed with a screen that meets the following requirements:

(1) The screen shall be factory made.

(2) The screen may not react with the groundwater being monitored.

(3) The screen shall maximize open area to minimize entrance velocities and allow rapid sample recovery.

(b) A monitoring well shall be filter-packed with chemically inert clean quartz sand, silica or glass beads. The material shall be well-rounded and dimensionally stable.

(c) A monitoring well shall be cased as follows:

(1) The casing shall maintain the integrity of the monitoring well borehole and shall be constructed of material that will not react with the groundwater being monitored.

(2) The minimum casing diameter shall be 4 inches unless otherwise approved by the Department in writing.

(3) The casing shall protrude at least 1 foot aboveground, unless otherwise approved by the Department, and shall be clearly visible.

(4) The casing shall be designed and constructed to prevent cross contamination between surface water and groundwater.

(5) The annular space above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(6) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the Department in the permit.

(7) Alternative casing designs for wells in stable formations may be approved by the Department.

(d) A monitoring well casing shall be enclosed in a protective casing that shall:

(1) Be of sufficient strength to protect the well from damage by heavy equipment and vandalism.

(2) Be installed for at least the upper 10 feet of the monitoring well, as measured from the well cap, with a maximum stick up of 3 feet, unless otherwise approved by the Department in writing.

(3) Be grouted and placed with a cement collar at least 3 feet deep to hold it firmly in position.

(4) Be numbered for identification with a label capable of withstanding field conditions and painted in a highly visible color.

(5) Protrude above the monitoring well casing.

(6) Have a locked cap.

(7) Be made of steel or any other material of equivalent strength.

§ 273.284. Sampling and analysis.

A person or municipality operating a municipal waste landfill shall conduct sampling and analysis from each monitoring point for the following parameters at the following frequencies:

(1) Quarterly, for ammonia-nitrogen, bicarbonate, calcium, chloride, fluoride, chemical oxygen demand, nitrate-nitrogen, pH, specific conductance, sulfate, total alkalinity, total organic carbon, total phenolics, total dissolved solids, iron, magnesium, manganese, potassium and sodium.

(2) Quarterly, for the following volatile organic compounds: tetrachloroethene, trichloroethene, 1,1,1-trichloroethane, 1,2-dibromoethane, 1,1-dichloroethene, 1,2-dichloroethene (cis and trans isomers), vinyl chloride, 1,1-dichloroethane, 1,2-dichloroethane, methylene chloride, toluene, ethyl benzene, benzene and xylene.

(3) Quarterly, for groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on United States Geological Survey datum.

(4) Annually, for total and dissolved concentrations of the following: arsenic, barium, cadmium, chromium, copper, lead, mercury, selenium, silver and zinc.

(5) Annually, for the following volatile organic compounds: 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, 1,1,2-trichloroethane, 1,2,3-trichloropropane, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 2-dichloropropane, 3-chloro-1-propene, 4-methyl-2-pentanone, bromomethane, carbon tetrachloride, chlorobenzene, chlorodibromomethane, chloroethane, chloromethane, cis-1,3-dichloropropene, trans-1,3-dichloropropene, dichlorodifluoromethane, methyl ethyl ketone, tribromomethane and trichlorofluoromethane.

(6) Annually, for ten volatile organic compounds not otherwise identified in this section, based on those compounds showing the greatest apparent concentration from the peaks of a mass spectra of each sample. These ten compounds shall be identified but their concentration does not require measurement.

§ 273.286. Groundwater assessment plan.

(a) *Requirement.* A person or municipality operating a municipal waste landfill shall prepare and submit to the Department a groundwater assessment plan within 60 days after one of the following occurs:

(1) Data obtained from monitoring by the Department or the operator indicates groundwater degradation at any monitoring point for parameters other than chemical

oxygen demand, pH, specific conductance, total organic carbon, turbidity, total alkalinity, calcium, magnesium and iron.

(2) Laboratory analysis of one or more public or private water supplies shows the presence of degradation that could reasonably be attributed to the facility.

(b) *Exceptions.* The operator is not required to conduct an assessment under this section if one of the following applies:

(1) Within 10 working days after receipt of sample results showing groundwater degradation the operator resamples the affected wells and analysis from resampling shows, to the Department's satisfaction, that groundwater degradation has not occurred.

(2) Within 20 working days after receipt of sample results indicating groundwater degradation, the operator demonstrates that the degradation was caused entirely by earth moving and other activities related to facility construction, or by seasonal variations.

(c) The groundwater assessment plan shall specify the manner in which the operator will determine the existence, quality, quantity, areal extent and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. A groundwater assessment plan shall be prepared by an expert in the field of hydrogeology. The plan shall contain, at a minimum, the following information:

(1) The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers and other assessment structures or devices to be used. If the operator establishes compliance points as part of the assessment, the points shall be wells constructed in accordance with §§ 273.282 and 273.283 (relating to number, location and depth of monitoring points; and standards for wells and casing of wells).

(2) Sampling and analytical methods for the parameters to be evaluated.

(3) Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the concentration, rate and extent of groundwater degradation from the facility.

(4) An implementation schedule.

(5) Identification of the abatement standard that will be met.

(d) The groundwater assessment plan shall be implemented upon approval by the Department in accordance with the approved implementation schedule, and shall be completed in a reasonable time not to exceed 6 months unless otherwise approved by the Department. If the Department determines that the proposed plan is inadequate, it may modify the plan and approve the plan as modified. The operator shall notify, in writing, each owner of a private or public water supply located within 1/2-mile downgradient of the disposal area that an assessment has been initiated.

(e) Within 45 days after the completion of the groundwater assessment plan, the operator shall submit a report containing the new data collected, analysis of the data and recommendations on the necessity for abatement.

(f) If the Department determines after review of the groundwater assessment report that implementation of an abatement plan is not required by § 273.287 (relating to abatement plan), the operator shall submit a permit modification application under § 271.222 (relating to permit modification) for necessary changes to the ground-

water monitoring plan. The operator shall implement the modifications within 30 days of the Department's approval.

(g) This section does not prevent the Department from requiring, or the operator from conducting, groundwater abatement or water supply replacement concurrently with or prior to implementation of the assessment.

§ 273.287. Abatement plan.

(a) The operator of a municipal waste landfill shall prepare and submit to the Department an abatement plan whenever one of the following occurs:

(1) The groundwater assessment plan prepared and implemented under § 273.286 (relating to groundwater assessment plan) shows the presence of groundwater degradation at one or more monitoring wells and the analysis under § 273.286(c) indicates that an abatement standard under subsection (d) will not be met.

(2) Monitoring by the Department or operator shows the presence of an abatement standard exceedance from one or more compliance points as indicated in subsection (d), even if a groundwater assessment plan has not been completed. The operator is not required to implement an abatement plan under this paragraph if the following conditions are met:

(i) Within 10 days after receipt of sample results showing an exceedance of an abatement standard at a point of compliance described in subsection (d), the operator resamples the affected wells.

(ii) Analysis from resampling shows to the Department's satisfaction that an exceedance of an abatement standard has not occurred.

(b) An abatement plan shall be prepared by an expert hydrogeologist and submitted to the Department. The plan shall contain the following information:

(1) The specific methods or techniques to be used to abate groundwater pollution from the facility.

(2) The specific methods or techniques to be used to prevent further groundwater pollution from the facility.

(3) A schedule for implementation.

(c) The abatement plan shall be completed and submitted to the Department for approval within 90 days of the time the obligation arises under this section unless the date is otherwise modified, in writing, by the Department.

(d) If abatement is required in accordance with subsection (a), the operator shall demonstrate compliance with one or more of the following abatement standards at and beyond 150 meters of the perimeter of the permitted disposal area or at and beyond the property boundary, whichever is closer:

(1) For constituents for which an MCL has been promulgated under the Federal Safe Drinking Water Act or the Pennsylvania Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-18; and 35 P.S. §§ 721.1—721.17), the MCL for that constituent.

(2) For constituents for which MCLs have not been promulgated, the background standard for the constituent.

(3) For constituents for which the background standard is higher than the MCL or risk-based standard identified under paragraph (4), the background standard.

(4) For constituents for which no MCLs have been established, the risk-based standard if the following conditions are met:

(i) The risk assessment used to establish the standard assumes that human receptors exist at the property boundary.

(ii) The level is derived in a manner consistent with Department guidelines for assessing the health risks of environmental pollutants.

(iii) The level is based on scientifically valid studies conducted in accordance with good laboratory practice standards (40 CFR Part 792 (relating to good laboratory practice standards)) promulgated under the Toxic Substances Control Act (15 U.S.C.A. §§ 2601—2692), or other scientifically valid studies approved by the Department.

(iv) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level of 1.0×10^{-5} at the property boundary.

(v) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subparagraph, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(e) The abatement plan shall be implemented within 60 days of approval by the Department in accordance with the approved implementation schedule. If the Department determines that the proposed plan is inadequate, it may modify the plan and approve the plan as modified.

(f) The abatement plan shall be continued until the Department states, in writing, based on monitoring by the Department and the operator, that groundwater pollution from the facility has been permanently abated.

MINERALS AND GAS

§ 273.291. Mineral resources.

(a) The operator shall isolate coal seams, coal outcrops and coal refuse from waste deposits in a manner that prevents combustion of the waste and that prevents damage to the liner system.

(b) Mine openings within the site shall be sealed in a manner approved by the Department.

(c) The operator shall implement a plan for controlling potential for damage from subsidence that was submitted and approved under § 273.120 (relating to mineral deposits information).

§ 273.292. Gas control and monitoring.

(a) The operator shall implement the gas control and monitoring plan approved under § 273.171 (relating to gas monitoring and control plan).

(b) The operator shall control decomposition gases generated within the site to prevent danger to workers, structures and to occupants of adjacent property.

(c) Gas venting and monitoring systems shall be installed during construction at facilities.

(d) Gas monitoring shall be conducted in accordance with the approved plan. Gas monitoring shall be conducted quarterly by the operator during active operations and after closure until the Department determines in writing that gas monitoring is not necessary to ensure compliance with the act, the environmental protection acts, regulations promulgated thereunder and the terms and conditions of the permit.

(e) Combustible gas levels may not equal or exceed:

(1) Twenty-five percent of the lower explosive limit in a structure within the site.

(2) The lower explosive limit at the boundaries of the site.

(f) The operator shall conduct active forced ventilation of the facility, using vents located at least 3 feet above the landfill surface if one of the following applies:

(1) Passive venting has caused or may cause violations of subsection (e).

(2) Induced positive gas flows will prevent or control offsite odors.

§ 273.293. Gas recovery.

(a) Gas recovery shall be conducted:

(1) In a manner that does not interfere or conflict with activities on the site or required control measures.

(2) Without creating or causing danger to persons or property.

(3) According to the plan approved by the Department under § 273.171 (relating to gas monitoring and control plan).

(b) The operator shall, on an annual basis, physically and chemically characterize recovered gas, condensates or other residues which are generated. Users of the recovered gas shall be informed of the chemical quality of the gas. If condensates or other residues are hazardous, they shall be managed under Chapters 260—265 and 270.

EMERGENCY PROCEDURES

§ 273.301. Hazard prevention.

Municipal waste landfills shall be designed, constructed, maintained and operated to prevent and minimize the potential for fire, explosion or release of solid waste constituents to the air, water or soil of this Commonwealth that could threaten public health or safety, public welfare or the environment.

§ 273.302. Emergency equipment.

(a) Except as provided in subsection (b), the operator shall have available in proper working condition the following equipment at the immediate operating area of the facility:

(1) An internal communications or alarm system capable of providing immediate emergency instruction by voice or signal to facility personnel.

(2) A communications system capable of summoning emergency assistance from local police, fire departments, emergency medical services and from State and local emergency response agencies.

(3) Portable fire extinguishers, fire control equipment, spill control equipment and decontamination equipment. For fire control equipment requiring water, the facility shall have a water supply of adequate quantity and pressure to supply the equipment.

(4) Portable gas explosimeters and gas monitoring equipment.

(b) The Department may waive or modify one or more of the requirements of subsection (a) in the permit if the operator demonstrates to the Department's satisfaction that the requirements are not necessary to protect public health and safety, public welfare and the environment.

(c) Equipment and material required by this section shall be tested and maintained so that it is operable in time of emergency.

(d) Adequate space shall be maintained to allow the unobstructed movement of emergency personnel and equipment to operating areas of the facility.

§ 273.303. Implementation of contingency plan.

(a) The operator of the facility shall immediately implement the applicable provisions of the approved contingency plan if there is an emergency. For the purposes of this section, the term "emergency" includes a fire, spill or other event that threatens public health and safety, public welfare or the environment and personal injury.

(b) During an emergency, the operator shall:

(1) Assess actual or potential hazards to public health and safety, public welfare and the environment that are occurring or may occur.

(2) Ensure that fires, spills or other hazards do not occur, reoccur or spread to other solid waste at the facility.

(3) Immediately telephone the Department and county emergency management agency and report the following information:

(i) The name of the person reporting the incident and telephone number where that person can be reached.

(ii) The name, address and permit number of the facility.

(iii) The date, time and location of the emergency.

(iv) A brief description of the nature of the emergency, the type and quantity of the solid waste involved, and what dangers to public health and safety, public welfare and the environment exist or may occur.

(v) The nature of injuries.

(vi) The parts of the contingency plan being implemented to alleviate the emergency.

(c) After an emergency, the operator of the facility shall do the following:

(1) Clean up the area affected by the emergency and treat, store or dispose of recovered solid waste, contaminated soil, contaminated water or other material in a manner approved by the Department.

(2) Prevent disposal, processing, storage or treatment of solid waste in the area affected by the emergency until the operator has cleaned up the area, and the Department has inspected and approved the resumption of operation after the cleanup.

RECORDKEEPING AND REPORTING

§ 273.311. Daily operational records.

(a) The operator of a facility shall make and maintain an operational record for each day that municipal waste is received, processed or disposed, and each day that construction, monitoring or postclosure activity occurs.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The particular grid location of the area currently being used for disposal of solid waste.

(5) A description of waste handling problems or emergency disposal activities.

(6) A record of deviations from the approved design or operational plans.

(7) A record of activities for which entries are needed in order to comply with the annual operation report required in § 273.313 (relating to annual operation report).

(8) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(9) A record of rejected waste loads and the reasons for rejecting the loads.

(10) A record of each incident in which radioactive material is detected in waste loads. The record shall include:

- (i) The date, time and location of the occurrence.
- (ii) A brief narrative description of the occurrence.
- (iii) Specific information on the origin of the material, if known.
- (iv) A description of the radioactive material involved, if known.
- (v) The name, address and telephone numbers of the supplier or handler of the radioactive material and the name of the driver.
- (vi) The final disposition of the material.

(11) A record of each vehicle, other than a combination, that exceeds 73,280 pounds gross weight and of each combination that exceeds 80,000 pounds gross weight.

(i) The record shall include:

(A) The gross weight of the vehicle when weighed at the facility.

(B) The registration plate number and home or base state registration of the vehicle.

(C) The name, business address and telephone number of the owner of the vehicle.

(D) The date and time when the vehicle was weighed at the facility.

(E) The date that the weight scale was last tested in accordance with 3 Pa.C.S. Chapter 41 (relating to the Consolidated Weights and Measures Act).

(ii) For purposes of this paragraph, the following terms have the following meanings unless the context clearly indicates otherwise:

Combination—Two or more vehicles physically interconnected in tandem. An example of a combination is a truck tractor attached to a semi-trailer.

Gross weight—The combined weight of a vehicle or combination of vehicles and its load, excluding the driver's weight.

Registration—The authority for a vehicle to operate on a highway as evidenced by the issuance of an identifying card and plate or plates.

(c) The operator shall maintain accurate operational records sufficient to determine whether municipal waste is being stored under Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the

environmental protection acts, but in no case less than 5 years. These records shall be made available to the Department upon request.

§ 273.313. Annual operation report.

(a) An operator shall submit to the Department an annual operation report on or before June 30 of each year.

(b) The annual operation report, which shall be submitted on a form supplied by the Department, shall include the following:

(1) A topographic survey map of the same scale, contour interval and grid system as the original site plans showing the following:

(i) The contours at the beginning and the end of the year.

(ii) The completed areas of the site as well as areas partially filled but not active during the previous year.

(2) A description of capacity used in the previous year and remaining permitted capacity.

(3) A description of the acreage used for disposal, the acreage seeded, the acreage that has been vegetated, the acreage where vegetation is permanently established and a narrative of the operator's progress in implementing its closure plan.

(4) A current certificate of insurance as specified in § 271.374(a) (relating to proof of insurance coverage), evidencing continuous coverage for public liability insurance as required by § 271.371 (relating to insurance requirement).

(5) Changes in the previous year concerning the information required by §§ 271.124 and 271.125 (relating to identification of interests; and compliance information). The report shall state if no changes have occurred.

(6) A change in the ownership of the land upon which the facility is located or a change in a lease agreement for the use of the land that may affect or alter the operator's rights upon the land.

(7) A written update of the total bond liability for the facility under § 271.331 (relating to bond and trust amount determination). If additional bond is determined to be necessary, it shall be submitted to the Department within 90 days after the annual report is due.

(8) Certification that the operator has received the analysis or certification required by § 287.54 (relating to chemical analysis of waste) for each type of residual waste or special handling waste received at the facility, and that the residual waste or special handling waste that is received at the facility meets the conditions in the facility's permit.

(9) A record of detected radioactive materials.

(c) The annual operation report shall be accompanied by a nonrefundable annual permit administration fee of \$2,800 in the form of a check payable to the "Commonwealth of Pennsylvania."

(d) The report shall include an evaluation of whether the monitoring plan implemented under this subchapter needs to be revised to comply with § 273.282 (relating to number, location and depth of monitoring points) because of changes in groundwater elevation or other reasons. If this evaluation determines that changes in the approved groundwater monitoring plan are necessary, the operator shall immediately notify the Department and submit an

application for permit modification under § 271.222 (relating to permit modification) for necessary changes in the monitoring plan.

§ 273.315. Recycling fee.

(a) On and after October 26, 1988, the operator of a municipal waste landfill shall pay a recycling fee in the form of a check payable to the "Commonwealth of Pennsylvania, Recycling Fund," in accordance with Chapter 7 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.701—4000.706). This fee shall terminate in accordance with law.

(1) The recycling fee shall be paid on a quarterly basis, on or before the 20th day of April, July, October and January for the 3 months ending the last day of March, June, September and December respectively.

(2) A recycling fee payment shall be accompanied by a form provided by the Department and completed according to its instructions and hand-signed by the operator.

(b) The fee shall be paid for all solid waste, except process residue and nonprocessable waste from a resource recovery facility, that is received at the facility on and after October 26, 1988, including, but not limited to, residual waste, special handling wastes, waste tires and other solid wastes received at the landfill. The recycling fee does not apply to recyclable or reusable materials that are received or separated from other waste at a transfer, composting or processing facility associated with the landfill, and which are marketed in accordance with subsection (d).

(c) The fee shall be \$2 per ton of weighed waste which is received at the landfill. If the facility is not required to weigh waste, the operator shall pay \$2 per 3 cubic yards of volume-measured solid waste for solid waste received at a landfill or facility.

(d) The operator shall maintain complete and accurate records of the weight or volume of materials which are salvaged and recycled from mixed waste after it has been received at the landfill, the market where the materials were sent for recycling or reuse, the date the materials were sent to a market and the weight of materials actually marketed for recycling. The operator may deduct the weight of materials salvaged and recycled from the landfill from the weight of waste for which the fee payment is made, but only for the quarter in which the materials were actually marketed for recycling. These records shall be kept by the operator for 5 years for audit purposes, and shall be made available to the Department or its auditors, or both, on request.

§ 273.316. Environmental stewardship fee.

(a) *Environmental stewardship fee.* The operator of a municipal waste landfill shall pay an environmental stewardship fee in the form of a check payable to the "Environmental Stewardship Fund" in accordance with 27 Pa.C.S. § 6112(b) (relating to extension of fees).

(1) The environmental stewardship fee shall be paid on a quarterly basis, on or before the 20th day of April, July, October and January for the 3 months ending the last day of March, June, September and December, respectively.

(2) An environmental stewardship fee payment shall be accompanied by a form provided by the Department and completed according to its instructions and signed by the operator.

(b) *Fee applies to solid waste.* The fee shall be paid for solid waste received at the facility on and after January

1, 2000, including, but not limited to, residual waste, special handling wastes, waste tires, nonprocessable residue from resource recovery facilities and waste materials which are received at the facility. The fee does not apply to recyclable or reusable materials received or separated from other waste at a collection, transfer, composting or processing facility associated with the landfill.

(c) *Amount.* The fee shall be 25¢ per ton of weighed waste which is received at the landfill. If the facility is not required to weigh waste, the operator shall pay 25¢ per 3 cubic yards of volume-measured solid waste for solid waste received at the facility.

(d) *Records required.* The operator shall maintain complete and accurate records of the weight or volume of materials which are salvaged and recycled from mixed waste after it has been received at the landfill, the market where the materials were sent for recycling or reuse, the date the materials were marketed and the weight of materials actually marketed for recycling. The operator may deduct the weight of materials salvaged and recycled from the landfill from the weight of waste for which the fee payment is made, but only for the quarter in which the materials were actually marketed for recycling. These records shall be maintained by the operator for 5 years for audit purposes and shall be made available to the Department or its auditors, or both, upon request.

(e) *Timeliness of payment.* The operator shall be deemed to have made a timely payment of the environmental stewardship fee if the operator complies with the following:

(1) The enclosed payment is for the full amount owed pursuant to this section and no further Departmental action is required for collection.

(2) The payment is accompanied by the required form and the form is complete and accurate.

(3) The letter transmitting the payment that is received by the Department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(f) *Refunds.* An operator that believes he has overpaid the environmental stewardship fee may file a petition for refund to the Department. If the Department determines that the operator has overpaid the fee, the Department will credit or refund the operator the amount due him. No credit or refund of the environmental stewardship fee will be made unless the petition for the refund is filed with the Department within 6 months of the date of the overpayment.

(g) *Assessment notices.*

(1) If the Department determines that an operator has not made a timely payment of the environmental stewardship fee, it will send the operator a written notice of the amount of the deficiency within 30 days of determining such deficiency. When the operator has not provided a complete and accurate statement of the weight or volume of solid waste received at the facility for the payment period, the Department may estimate the weight or volume in its notice.

(2) If any amount due hereunder remains unpaid 30 days after receipt of notice thereof, the Department may order the operator of the facility to cease receiving any solid waste until the amount of the deficiency is paid in full.

(h) *Constructive trust.* Environmental stewardship fees collected by an operator and held by the operator prior to

payment to the Department shall constitute a trust fund for the Commonwealth. The trust shall be enforceable against the operator, its representatives and any person receiving any part of the fund without consideration or with knowledge that the operator is committing a breach of the trust. A person receiving payment of lawful obligation of the operator from the fund shall be presumed to have received it in good faith and without knowledge of the breach of trust.

CLOSURE PROVISIONS

§ 273.322. Closure.

(a) The operator shall implement the closure plan approved by the Department under § 273.192 (relating to closure plan).

(b) At least 180 days before implementation of a closure plan, the operator shall review its approved closure plan to determine whether the plan requires modification, and shall submit proposed changes to the Department for approval under § 271.222 (relating to permit modification).

(c) If groundwater degradation exists at closure or occurs after closure, a person shall meet one of the following:

(1) Continue to implement an approved abatement plan.

(2) Submit an application for a closure plan modification in accordance with the procedures for a major permit modification. The operator shall select one or more remediation standards that will be met in accordance with the final closure certification requirements in § 271.342 (relating to final closure certification).

(d) An application for a closure plan modification shall include the following:

(1) Technical information and supporting documentation identifying the remediation activities that will be conducted to meet and maintain the remediation standards.

(2) If a remedy relies on access to or use of properties owned by third parties, for remediation or monitoring, documentation of cooperation or agreement.

(e) After closure, the Department may modify, in accordance with § 271.144 (relating to public notice and public hearings for permit modifications), the frequency of monitoring for a parameter for which quarterly monitoring is required under § 273.284 (relating to sampling and analysis) to a semi-annual frequency if the operator demonstrates the following:

(1) The parameter has not caused or contributed to groundwater degradation.

(2) Based upon the characteristics of the waste at the facility and the performance of the liner system, the parameter is unlikely to cause or contribute to groundwater degradation in the future.

(f) The Department may modify the frequency of monitoring for a parameter for which semi-annual monitoring was approved under subsection (e) to an annual basis if the results of semi-annual monitoring continue to demonstrate the following:

(1) The parameter has not caused or contributed to groundwater degradation.

(2) Based upon the characteristics of the waste at the facility and the performance of the liner system, the

parameter is unlikely to cause or contribute to groundwater degradation in the future.

(g) The Department may reinstate the requirement of quarterly monitoring for any parameter monitored under subsection (e) or (f) if the Department has reason to believe that the parameter may cause or contribute to groundwater degradation.

Subchapter E. ADDITIONAL OPERATING REQUIREMENTS FOR SPECIAL HANDLING AND RESIDUAL WASTES

GENERAL

§ 273.501. Scope.

(a) A person or municipality that operates a municipal waste landfill shall comply with the applicable requirements of this subchapter if the person or municipality receives special handling or residual waste at the facility.

(b) The requirements of this subchapter are in addition to the operating requirements in Subchapter C (relating to operating requirements).

(c) Special handling and residual waste may not be received at a municipal waste landfill unless:

(1) The Department has expressly approved an application for the disposal of the specific waste submitted under Subchapter D (relating to additional application requirements for special handling and residual wastes).

(2) The waste is received in accordance with the terms and conditions of the permit, the requirements of this chapter, the act and the environmental protection acts.

(3) The waste is compatible with the liner system.

(4) The waste is compatible with other wastes disposed at the facility.

(5) The leachate generated by the disposed waste can be adequately treated by the leachate treatment facility.

(6) The physical characteristics of the waste will not cause or contribute to structural instability or other operation problems at the site.

SPECIFIC WASTES

§ 273.511. Processed infectious waste disposal.

(a) Infectious waste may not be disposed at a municipal waste landfill unless:

(1) The waste has been disinfected in accordance with § 284.321 (relating to infectious waste monitoring requirements).

(2) Prior to initial disposal the landfill operator has obtained the necessary approval for disposal from the Department based on the application provided under § 273.411 (relating to processed infectious and chemotherapeutic waste disposal).

(3) The waste being received has been disinfected by a permitted processing facility.

(b) Waste consisting of human anatomical remains, including human fetal remains, may not be disposed at municipal waste landfills unless the waste has first been incinerated at a permitted waste processing facility.

(c) Body fluids and animal body fluids may be disposed by discharge into a permitted sewage treatment system that provides a minimum of secondary treatment in accordance with local, Federal and State requirements, including The Clean Stream Law (35 P. S. §§ 691.1—691.1001).

(d) Sharps shall be rendered unusable prior to disposal.

§ 273.513. Sewage sludge.

Prior to receipt at a landfill, sewage sludge shall meet one of the processes to significantly reduce pathogens or one of the processes to further reduce pathogens set forth in Chapter 271, Subchapter J, Appendix A (relating to pathogen treatment processes) and one of the vector attraction reduction standards in § 271.933(b) (relating to vector attraction reduction). The Department may approve as part of a permit another method if the operator demonstrates that the method will control pathogens, vectors and odors.

CHAPTER 277. CONSTRUCTION/DEMOLITION WASTE LANDFILLS

Subchapter B. APPLICATION REQUIREMENTS

PHASE I APPLICATION REQUIREMENTS

§ 277.111. General.

The Phase I application shall:

(1) Comply with the requirements of this section and §§ 277.112—277.122 (relating to Phase I application requirements).

(2) Comply with the applicable requirements of Chapter 271, Subchapter B (relating to general requirements for permits and permit applications).

§ 277.112. Facility plan.

An application to operate a construction/demolition waste landfill shall contain a narrative describing the following:

(1) The general operational concept for the proposed facility, including the origin, composition and weight or volume of solid waste that is proposed to be disposed of at the facility, type of liner system, the proposed capacity of the facility, the expected life of the facility and the size, sequence and timing of solid waste disposal operations at the facility.

(2) A detailed description of the volume of soil needed to construct and operate the facility and of the method by which the soil will be delivered. The description will include the number of trucks, the access roads they will use, delivery times and any other information relevant to assessing the impacts of the operation.

§ 277.113. Maps and related information.

(a) An application shall contain a topographic map on a scale in which 1 inch equals no more than 200 feet with 10-foot maximum contour intervals, including necessary narrative descriptions, which shows the following:

(1) The boundaries and names of present owners of record of land, both surface and subsurface, and including easements, rights-of-way and other property interests, for the proposed permit area and adjacent area; the boundaries of the land within the proposed permit area; and a description of title, deed or usage restrictions affecting the proposed permit area.

(2) The boundaries of the land to be affected during the estimated total life of the proposed operation, including the boundaries of areas that will be affected in each sequence of landfilling activity and boundaries of areas that will be used for impoundments.

(3) The location of areas on and off the permit area which are proposed to be excavated to obtain earthen material for the construction of the facility, for cover material and for other construction purposes.

(4) The location and name of public and private water sources within 1/2 mile of the proposed facility. If more than 50 wells are located within the 1/2 mile radius, the applicant may identify only the closest wells in each direction and generally describe the location and number of wells further away.

(5) The location, name and elevation of surface water bodies, such as springs, streams, lakes, ponds, wetlands, constructed or natural drains, and irrigation ditches within 1/4 mile of the proposed facility.

(6) The location of gas and oil wells (active and inactive) surface and underground coal and noncoal mines (active and inactive) coal seams to a depth of 500 feet, mine spoil piles, dumps, dams, embankments and mine pool discharge points within 1/4 mile of the proposed facility.

(7) The location of rights-of-way for high-tension power lines, pipelines, railroads and public and private roads within 1/4 mile of the proposed facility.

(8) The location of buildings currently in use within 1/4 mile of the proposed facility.

(9) If solid waste disposal or processing has previously taken place within 1/4 mile of the proposed facility, the names of the owners or operators, or both, of the facility, the type of solid waste processed or disposed, and when applicable, cross sections indicating the interface details between areas previously filled and areas to be filled.

(10) The anticipated location of water quality monitoring points.

(11) The boundaries of land within the proposed permit area or adjacent area identified in § 277.202 (relating to areas where construction/demolition waste landfills are prohibited).

(12) The elevation and location of test borings and core samplings taken under § 277.115 (relating to geology and groundwater description), and the location of test pits or excavations taken under § 277.117 (relating to soils description).

(13) The municipalities in which the permit area is proposed to be located.

(14) The location of 100-year floodplain boundaries in the proposed permit area and adjacent area.

(15) The location of sinkholes, fractures, fracture traces, outcrops, lineaments and mine pools in the proposed area and adjacent area.

(16) The location of water discharges into a surface body of water in the proposed permit area and adjacent area.

(b) A different scale for the topographic map required in subsection (a) may be used if approved in writing by the Department.

(c) An application shall contain a topographic map showing the location and name of public water sources within 3 miles downstream or downgradient from the proposed facility. The map shall be on a scale of 1 inch equals no more than 500 feet with 10-foot maximum contour intervals including necessary narrative descriptions.

§ 277.114. Description of geology, soils and hydrology—general requirements.

In preparing the soils, geology and hydrology descriptions required by §§ 277.115—277.120 the applicant shall include information about the proposed permit area and

the adjacent area. Plans and cross sections submitted to comply with §§ 277.115—277.122 shall be on a scale in which 1 inch equals no more than 200 feet, with contour intervals at a maximum of 10 feet. Maps and cross sections submitted for a particular application shall be of the same or easily compared scales.

§ 277.115. Geology and groundwater description.

(a) An application shall contain a description of the geology and groundwater in the proposed permit area and adjacent area down to and including the lowest aquifer that may be affected by the facility, including the following:

(1) The results of a sufficient number of test borings and core borings to accurately characterize geology, soils, groundwater flow, groundwater chemistry and flow systems of the proposed permit area and adjacent area, which shall be at least three test borings. At least one test boring shall be a core boring. The applicant shall include the actual surface elevations of the drill holes.

(2) Stratigraphy, lithologic, physical characteristics and thickness of each stratum, including the location and depth of aquifers.

(3) The hydrologic characteristics of each aquifer described in paragraph (2), including field test data for hydraulic conductivity, storage coefficient and transmissivity, groundwater hydraulic gradient and velocity. The description of these characteristics shall be based on multiple well aquifer tests. Alternative techniques approved by the Department may be employed when multiple well aquifer tests are not feasible. The application shall include the procedures and calculations used to determine these characteristics.

(4) The geologic structure within the proposed permit area and adjacent area, and its relation to the regional geological structure.

(5) The uses of each aquifer.

(6) Aquifer characteristics necessary to accurately describe three dimensional groundwater flow through the proposed permit area and adjacent area, including storage and discharge characteristics.

(7) Extent of coal and noncoal mineral deposits and mines within the proposed permit area, as required by § 277.120 (relating to mineral deposits information).

(8) The well head protection areas in accordance with § 109.1 (relating to definitions) that may be impacted by the facility.

(9) A groundwater contour map based upon the highest groundwater level recorded monthly in each boring for the previous year. The Department may require more frequent measurements after significant precipitation events.

(b) A boring or coring not cased and capped or not to be used for groundwater monitoring shall be grouted shut or otherwise sealed in a manner approved by the Department.

§ 277.116. Groundwater quality description.

(a) An application shall contain a description of the chemical characteristics of each aquifer in the proposed permit area and adjacent area, based on at least 6 consecutive months of monitoring data. This description shall be based on quarterly sampling and analysis from each monitoring well for the following parameters and elevations:

(1) Chloride, sulfate, chemical oxygen demand, pH, specific conductance, total organic carbon, total organic halogen, iron, lead and sodium.

(2) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on United States Geological Survey datum.

(b) For construction/demolition waste landfills permitted by the Department after April 9, 1988, the 6 months of data required by this section shall be taken prior to the disposal or storage of waste at the facility.

(c) For construction/demolition waste landfills permitted by the Department before April 9, 1988, the 6 months of data required by this section shall be taken beginning with the first anniversary date of the issuance of the permit after April 9, 1988.

(d) Monitoring wells under this section shall be designed, constructed and maintained under §§ 277.281—277.283 (relating to general requirements; number, location and depth of monitoring points; and standards for wells for casing of wells).

§ 277.117. Soils description.

(a) An application shall contain the following:

(1) A description of the depth to the seasonal high water table within the proposed permit area and adjacent area to demonstrate that the seasonal high water table will not contain the liner system.

(2) A description of the soils to be used for intermediate cover, final cover and facility construction, including, texture, chemical description, laboratory particle size analysis and quantity. A cross-section of the borrow pits within the proposed permit area shall be included.

(3) For an expansion of a facility under § 277.110 (relating to modification to expand existing landfill), a description of the soils within the proposed permit area and adjacent area down to the bedrock, including, for each soil horizon, depth, matrix, color, texture, structure, consistency, degree of mottling, mottling colors and laboratory particle size analysis.

(b) In preparing the soils description, the applicant shall:

(1) Base the description on a sufficient number of pits, excavations and samples to allow an accurate characterization of the soils in the proposed permit area and adjacent area, and each borrow area, whether onsite or offsite.

(2) Use the following soil classification systems:

(i) For intermediate and final cover, the United States Department of Agriculture Soil Classification System.

(ii) For the liner system, site construction and other noncover uses, the Unified Soil Classification System.

(3) Conduct required laboratory particle size analyses according to ASTM D 422 (Standard Method for Particle Size Analysis of Soils) or another analytical method approved, in writing, by the Department prior to the analyses.

(c) For an expansion of a facility under § 277.110, the application shall contain an explanation, based on the soils described in this section, of how the facility would comply with § 277.246 (relating to attenuating soil base).

§ 277.120. Mineral deposits information.

(a) If the proposed permit area and adjacent area overlie existing workings of an underground mine, the

applicant shall submit sufficient information to evaluate the potential for mine subsidence damage to the facility, including the following:

(1) Maps and plans showing previous mining operations underlying the proposed facility.

(2) An investigation, with supporting documentation, by a registered professional engineer with geotechnical expertise addressing the probability and potential impacts of future subsidence. The investigation shall address the potential for additional mining beneath the permit and adjacent area, the stability of the final underground workings, the maximum subsidence likely to occur in the future and the effect of that subsidence on the integrity of the facility, and any measures which have been or will be taken to stabilize the surface.

(b) If the proposed permit area or adjacent area overlies recoverable or mineable coals, the applicant shall meet one of the following requirements:

(1) The applicant shall demonstrate that the applicant owns the coal and warrants that the coal will not be mined as long as construction/demolition waste remains on the site.

(2) The applicant shall meet the following requirements:

(i) The applicant owned or entered into an enforceable option contract to purchase land on which the expansion would operate on or before December 23, 2000, and still holds the option rights, still owns the land or owns the land pursuant to the option rights contract when the permit expansion is issued.

(ii) The applicant submits a written agreement executed prior to December 23, 2000, that demonstrates that coal providing support will not be mined as long as waste remains on the site.

§ 277.121. Notification of proximity to airport.

An applicant shall notify the Bureau of Aviation of the Department of Transportation, the Federal Aviation Administration and the airport if a proposed landfill or expansion is within 6 miles of an airport runway. The application shall include a copy of each notification and each response to each notification received by the applicant.

§ 277.122. Modification to expand existing landfill.

For a construction/demolition waste landfill constructed with attenuating soil and permitted by the Department prior to December 23, 2000, the Department may waive or modify the liner system and leachate treatment requirements in this chapter in the approval of a complete application for permit modification for expansion of the landfill if the operator demonstrates the following:

(1) No groundwater degradation has occurred from the existing operation.

(2) The physical properties and chemical composition of the waste that will be received under the permit modification will not change from that approved under the existing permit.

PHASE II APPLICATION REQUIREMENTS—GENERAL PROVISIONS

§ 277.131. Basic requirements.

(a) The Phase II permit application shall:

(1) Comply with this section and §§ 277.132—277.137, 277.141, 277.142, 277.151, 277.152, 277.161—277.164, 277.171, 277.181, 277.191 and 277.192.

(2) Comply with Chapter 271, Subchapter D (relating to financial assurances requirements).

(b) Applications, plans, cross sections, modules and narratives shall demonstrate how the construction and operating requirements of Subchapter C (relating to operating requirements) will be implemented, and shall include quality control measures necessary to ensure proper implementation.

(c) The plans, designs, cross sections and maps required by this section and §§ 277.132—277.137, 277.141, 277.142, 277.151, 277.152, 277.161—277.163, 277.171, 277.181, 277.191 and 277.192 shall be on a scale in which 1 inch equals no more than 200 feet with 10-foot maximum contour intervals.

§ 277.132. Operation plan.

An application shall contain a description of the construction/demolition waste landfill operations proposed during the life of the facility within the proposed permit area, including, at a minimum, the following:

(1) A narrative describing the type and method of construction/demolition waste landfill procedures, procedures for inspection and monitoring of incoming waste, sequence of landfilling activity, type of landfilling activity, proposed engineering techniques and the major equipment to be used under § 277.215 (relating to equipment), using the maps and grids required by § 277.133 (relating to map and grid requirements) as a basis for description.

(2) A narrative explaining the method and schedule for construction, operation, modification, use, maintenance and removal of the following components of the proposed facility, unless their retention is proposed for postclosure land use:

(i) Dams, embankments, ditches and other impoundments.

(ii) Borrow pits, soil storage and handling areas and structures.

(iii) Water and air pollution control facilities.

(iv) Erosion control facilities.

(v) Equipment storage and maintenance buildings, and other buildings.

(vi) Access roads.

(3) A construction schedule tied to the grid coordinate system required by § 277.133, a site preparation plan and a schedule for disposing of solid waste at the site, including the maximum daily volume or weight of waste that will be received at the facility.

(4) An explanation of how the applicant intends to comply with § 277.214 (relating to measurement and inspection of waste).

(5) A plan for assuring that solid waste received at the facility is consistent with § 277.201 (relating to basic limitations).

(6) The proposed operating hours of the proposed facility. The operating hours include those hours related to construction and other activities related to operation of the facility.

§ 277.133. Map and grid requirements.

(a) An application shall contain a topographic map of the proposed permit area and adjacent area, including necessary narrative descriptions, showing the following:

(1) The boundaries of lands proposed to be affected over the estimated total life of the proposed operation and the sequence of landfilling and closure.

(2) Changes in a component of the facility or a feature within the proposed permit area to be caused by the proposed operation.

(3) Buildings, utility corridors and facilities which will be used in the operation.

(4) The areas of land for which a bond will be posted under Chapter 271, Subchapter D (relating to financial assurances requirements).

(5) Solid waste storage, processing or unloading areas.

(6) The water diversion, collection, conveyance, erosion and sedimentation control, treatment, storage and discharge facilities to be used.

(7) Location and elevation of the permanent physical marker for the grid coordinate system required by subsection (b).

(8) The gas management, collection and control facilities, if required or proposed.

(9) The boundaries of construction activities.

(10) The location of barriers, fences and similar structures required by § 277.212 (relating to access control).

(11) The location of each sedimentation pond, permanent water impoundment or similar facility.

(12) The location of access roads to the site, including slopes, grades and lengths of the roads.

(13) The location and identification of monitoring wells.

(14) A designated area for vehicles for use in the event of the detection of waste containing radioactive material. The designated area shall, by location or shielding, protect the environment, facility staff and public from radiation originating in the vehicle. The Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities* Document Number 250-3100-001, describes various factors to consider in determining an appropriate designated area.

(b) The applicant shall also submit a grid coordinate system for the entire proposed permit area. The horizontal control system shall consist of a grid not to exceed 200-foot-square sections. A permanent benchmark for horizontal and vertical control shall be shown. The grid system shall be tied to the benchmark and baseline.

§ 277.134. Plan for access roads.

The application shall contain designs, cross sections and specifications for access roads, including load limits, under § 277.213 (relating to access roads).

§ 277.136. Nuisance minimization and control plan.

(a) The application shall contain a plan in accordance with § 277.218 (relating to nuisance minimization and control) to minimize and control hazards or nuisances from vectors, odors, noise, dust and other nuisances not otherwise provided for in the permit application.

(b) The plan shall include the following:

(1) Provisions for the routine assessment and control of vector infestation.

(2) Methods to minimize and control nuisances from odors, dustfall and noise off the property boundary from the facility.

(3) For odors, the determination of normal and adverse weather conditions based on site-specific meteorological

data. Prior to the installation of equipment and collection of meteorological data, a protocol for the installation and data collection shall be approved by the Department.

(c) The plan required in subsection (a) may include a contractual arrangement for services of an exterminator or an air quality, noise, dust control or other professional.

§ 277.138. Recycling plan.

The application shall contain a plan for salvaging and recycling waste materials received at the facility for which recycling is cost effective, including proposed salvage areas, salvaging methods and anticipated markets for salvaged materials, in accordance with § 277.219 (relating to recycling).

§ 277.139. Daily volume.

(a) The application shall contain proposed average and maximum daily volumes for the facility, and a detailed justification for these volumes, based on §§ 271.126 and 271.127 (relating to requirement for environmental assessment; and environmental assessment).

(b) The average daily volume is a limit on the volume of solid waste that is permitted to be received at the facility, and shall be computed quarterly by averaging the total volume received over the quarter.

§ 277.140. Radiation protection action plan.

(a) An application shall contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting.

(b) The action plan shall be prepared in accordance with the Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, Document Number 250-3100-001, or in a manner at least as protective of the environment, facility staff and public health and safety and which meets all statutory and regulatory requirements.

(c) The action plan shall be incorporated into the landfill's approved waste analysis plan, under § 271.613 (relating to waste analysis plan).

PHASE II APPLICATION REQUIREMENTS— COVER AND REVEGETATION

§ 277.141. Compaction and cover plan.

An application shall contain a plan for compaction and cover at the proposed landfill under §§ 277.216, 277.232 and 277.233 (relating to unloading and compaction; intermediate cover and slopes; and final cover and grading), including, at a minimum, the following information:

(1) The procedures for, and degree of, compaction of solid waste.

(2) The number and thickness of lifts.

(3) The materials and procedures for application of intermediate cover and final cover material that meet the standards in §§ 277.232 and 277.233.

(4) The procedures to establish intermediate and final elevations for the landfill.

PHASE II APPLICATION REQUIREMENTS— WATER QUALITY PROTECTION AND MONITORING

§ 277.152. Water quality monitoring plan.

(a) An application shall contain a water quality monitoring plan showing how the operator intends to comply

with §§ 277.281—277.288 (relating to water quality monitoring). The plan shall include, at a minimum, the following:

(1) The number, location and depth of proposed monitoring points.

(2) Preoperational data showing existing groundwater quality as required by § 277.116 (relating to groundwater quality description), and a procedure to establish this groundwater quality.

(b) The application shall contain a groundwater sampling and analysis plan. The plan shall include:

(1) Procedures and techniques designed to accurately measure groundwater quality upgradient, beneath and downgradient of the proposed waste disposal area.

(2) Department approved sampling and analytical methods that are specific to the proposed facility and that will accurately measure solid waste constituents, leachate or constituents of decomposition in the groundwater.

(3) Procedures and techniques for sample collection, sample preservation and shipment, analytical procedures, chain of custody control and field and laboratory quality assurance and quality control.

(c) The Department may approve the use of an alternate groundwater monitoring system for facilities located in the anthracite coal region if the applicant demonstrates to the Department's satisfaction with a detailed hydrogeologic study that the following exist:

(1) The nature and extent of underground coal mining beneath the facility make impracticable the installation of the groundwater monitoring system required by this subchapter.

(2) The proposed alternate system is capable of completely and accurately identifying groundwater degradation and pollution from the proposed facility.

PHASE II APPLICATION REQUIREMENTS— LINERS AND LEACHATE MANAGEMENT

§ 277.161. Liner system and leachate control plan.

(a) The application shall contain plans, drawings, cross sections and specifications for a liner system to demonstrate compliance with §§ 277.251—277.260 (relating to liner system) including:

(1) Design of the liner system, including the thickness and characteristics of the subbase, the thickness and characteristics of the leachate detection zone, the design for the leachate monitoring system in the leachate detection zone, the nature and thickness of the liner material, the thickness and characteristics of the protective cover and leachate collection zone and the design for the leachate collection system in the leachate collection zone.

(2) A plan for installing the liner system.

(b) The application shall include a quality assurance and quality control plan for the construction and installation of the liner system. The plan shall include at a minimum:

(1) A description of the testing procedures and construction methods proposed to be implemented during construction of the liner system.

(2) A description of the manner in which the protective cover and liner system will be maintained and protected in unfilled portions of the disposal area during and prior to placement of the initial lift of solid waste.

(3) A description of the manner in which the protective cover and liner system will be protected from weather during placement of the initial lift of solid waste.

(4) A description of the qualifications of the quality assurance and quality control personnel, presented in terms of the experience and training necessary to implement the plan.

(5) A sampling plan for every component of the liner system, including sample size, methods for determining sample locations, sampling frequency acceptance and rejection criteria and methods for ensuring that corrective measures are implemented as soon as possible.

(6) A plan for documenting compliance with the quality assurance and quality control plan.

(c) The application shall demonstrate that leachate will not adversely affect the physical or chemical characteristics of the proposed liner, or inhibit the liner's ability to restrict the flow of solid waste, solid waste constituents or leachate, based on EPA or ASTM guidelines approved by the Department.

(d) The application shall include a complete description of the physical, chemical, mechanical and thermal properties for the proposed primary and secondary liners, based on ASTM methods when appropriate. Except to the extent that the Department waives in writing any of the following for nonsynthetic secondary liners, these properties shall include, at a minimum:

- (1) Thickness.
- (2) Tensile strength at yield.
- (3) Elongation at yield.
- (4) Elongation at break.
- (5) Density.
- (6) Tear resistance.
- (7) Carbon black content.
- (8) Puncture resistance.
- (9) Seam strength (percentage of liner strength).
- (10) Ultraviolet light resistance.
- (11) Carbon black dispersion.
- (12) Permeability.
- (13) Liner friction angle in degrees.
- (14) Stress crack resistance.
- (15) Oxidative induction time.
- (16) Chemical compatibility.
- (17) Percent recycled materials.

§ 277.162. Leachate treatment plan.

(a) The application shall contain a plan for treating leachate from the proposed facility in a manner that complies with §§ 277.271—277.276. The plan shall include:

(1) An estimate of the quality and quantity of leachate that is estimated to be produced annually by the facility, based on the water balance method set forth in "Use of Water Balance Method for Predicting Leachate Generation from Solid Waste Disposal Sites" U. S. EPA SW-168 (1975), or another method of accurately projecting leachate flows that is approved by the Department, in writing. The estimate shall include the 30-day leachate volume and average flow rate for each month of the year. A separate estimate shall be submitted for anticipated

leachate generation at the end of 5-year increments of operation for 20 years, or until closure, whichever date is earlier. For existing facilities, current leachate generation shall be included with this separate estimate.

(2) Plans, designs and cross sections for the proposed collection and handling system.

(3) Plans, designs and cross sections for onsite treatment or disposal systems, including tanks and impoundments that are proposed to be used or constructed for storage, pretreatment or treatment of leachate from the facility.

(4) If a treatment system already in operation is proposed to treat leachate from the facility, a description of the system, including its NPDES permit number, its capability to treat leachate from the facility, and its compliance status under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and regulations thereunder.

(b) If interim vehicular transportation to an offsite treatment facility is proposed, the applicant shall:

(1) Provide a copy of a signed contractual agreement with the operator of a primary offsite facility that provides for treatment of leachate at the facility, and which covers the period of time that offsite treatment will be provided; or provide a signed letter of intent from the operator of the offsite facility to enter a contractual agreement for leachate treatment if the permit application is approved by the Department.

(2) Provide a copy of a signed contractual agreement with the operator of a second offsite treatment facility that provides for backup treatment of leachate at the second treatment facility if, for any reason, leachate cannot be treated by the primary treatment facility operator; or provide a signed letter of intent from the operator of the second offsite facility to enter the contractual agreement if the permit application is approved by the Department.

(3) Submit additional bond to the Department in an amount sufficient to pay for the cost of vehicular transportation and offsite leachate treatment until final closure if the landfill operator fails to provide offsite treatment in a manner consistent with the permit, the act and this chapter.

(4) Submit plans, designs and cross sections for an onsite pretreatment facility as required by § 277.273(b)(1) (relating to leachate transportation).

(c) If leachate recirculation of raw or pretreated leachate is proposed in conjunction with another treatment method, the application shall describe the following:

(1) The proposed leachate distribution method over the filled area, including designs and cross sections.

(2) Methods that will be used to prevent leachate seeps and breakouts.

(3) Methods that will be used to prevent odors, runoff and ponding.

(d) The application shall also contain a schedule and method for cleaning sludges from the leachate storage and treatment system, and a plan for disposing of the sludges.

§ 277.163. Modifications in leachate treatment plan.

(a) If a problem identified in § 277.277 (relating to Department notice and remedial action) occurs, the operator shall submit to the Department, within 60 days, a permit modification application under § 271.222 (relating

to permit modification), with plans, designs and cross sections to modify its leachate treatment plan.

(b) The Department may approve permit modification applications under § 271.222 to extend, by 1 year at a time, the 3-year limitation for leachate transportation in § 277.273(a) (relating to leachate transportation) if the following apply:

(1) The applicant complies with § 273.162(b) (relating to leachate treatment plan).

(2) The applicant has obtained the necessary permits to construct and operate a leachate treatment system under § 277.272 (relating to basic treatment methods).

(3) Leachate transportation from the facility has not caused or contributed to surface water or groundwater pollution.

(4) The applicant has a valid contract for the treatment of leachate at an offsite treatment facility for the 1-year term of the proposed permit modification.

(5) The offsite treatment facility to which leachate would be transported is operating in compliance with The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and regulations thereunder, and is otherwise capable of accepting and treating leachate from the landfill.

(6) The landfill has a remaining permitted life, based on permitted capacity, of at least 3 years.

§ 277.164. Application requirements for noncoal mine disposal.

(a) In addition to the other requirements of this subchapter, a person or municipality that applies for an expansion of a construction/demolition waste landfill permit in a noncoal mine permitted prior to December 23, 2000, shall submit a plan, including necessary drawings, designs and specifications, to show how the applicant will comply with § 277.259 (relating to noncoal mine disposal).

(b) The application shall:

(1) Quantify the rate of surface and groundwater flow into the noncoal mine, including a minimum of 15 years historical pumping data with particular emphasis on seasonal maximums.

(2) Include a detailed hydrogeological evaluation of the structure, permeability, transmissivity and stability of the rock in the noncoal mine.

(3) Include a plan for lining the bottom and walls of the noncoal mine as set forth in §§ 277.251—277.260 (relating to liner system), or a detailed justification for not providing the liner system to protect surface and groundwater.

(4) Include a plan for ensuring that funds are available to maintain and operate the pumping system until the leachate and the facility are no longer capable of causing surface water or groundwater pollution.

(5) Quantify leachate generation based upon a 100 year, 24-hour precipitation event using methods that are required by § 277.162(a)(1) (relating to leachate treatment plan).

PHASE II APPLICATION REQUIREMENTS—CLOSURE PROVISIONS

§ 277.192. Closure plan.

(a) The application shall contain a plan describing the activities that are proposed to occur in preparation for closure and after closure to ensure compliance with this chapter.

(b) The closure plan shall include:

(1) A plan for the decontamination and removal of equipment, structures and related material from the facility.

(2) An estimate of the year in which final closure will occur, including an explanation of the basis for the estimate.

(3) A description of the steps necessary for closure if the facility closes prematurely.

(4) A narrative description, including a schedule, of measures that are proposed to be carried out in preparation for closure and after closure at the facility, including measures relating to:

(i) Water quality monitoring.

(ii) Gas control and monitoring.

(iii) Leachate collection and treatment.

(iv) Erosion and sedimentation control.

(v) Revegetation and regrading, including maintenance of the final cover.

(vi) Access control, including maintenance of access control.

(5) A description of the means by which funds will be made available to cover the cost of postclosure operations, which shall include an assessment of projected postclosure maintenance costs, a description of how the necessary funds will be raised, a description of where the funds will be deposited, copies of relevant legal documents and a description of how the funds will be managed prior to closure.

(6) The name, address and telephone number at which the operator can be reached during the postclosure period.

Subchapter C. OPERATING REQUIREMENTS

GENERAL PROVISIONS

§ 277.201. Basic limitations.

(a) Except as provided in subsection (b), a person or municipality may not own or operate a construction/demolition waste landfill unless the Department has first issued a permit to the person or municipality for the facility under this chapter.

(b) A person or municipality may conduct monitoring under § 277.116 (relating to groundwater quality description) without a permit if the Department has given written approval for the monitoring based on written plans that are consistent with this chapter. The monitoring information may be used for a permit application for the proposed facility.

(c) A person who operates a construction/demolition waste landfill shall comply with the following:

(1) The act, this article and other applicable regulations promulgated under the act.

(2) The plans and specifications in the permit, the terms and conditions of the permit, the environmental protection acts, this title and orders issued by the Department.

(d) Except for sewage sludge used to assist revegetation after final cover has been applied under the approved permit, municipal waste other than construction/demolition waste may not be disposed at a construction/demolition waste landfill.

(e) A person or municipality may not allow residual waste to be disposed at the facility unless the Department has specifically approved the disposal of the waste at the facility in the permit.

(f) The operator may not allow explosive waste to be disposed at the facility.

(g) Hazardous waste subject to Article VII (relating to hazardous waste management) may not be disposed, processed or stored where a construction/demolition waste landfill is operated.

(h) Except to the extent that leachate recirculation is allowed in the permit under § 277.162 (relating to leachate treatment plan), bulk or noncontainerized liquid waste may not be disposed or processed at a construction/demolition waste landfill. Containers holding free liquids may not be accepted unless the container is less than 1 gallon in size, except as otherwise provided in the permit.

(i) Lead acid batteries may not be disposed at the facility.

(j) Loads composed mostly of leaf waste may not be disposed at the facility.

(k) A person or municipality may not allow solid waste to be received, disposed or otherwise managed at the facility if the transportation to, or processing or management at, the facility would violate applicable laws in effect in the county or state in which the waste was generated, or State or local solid waste management plans in effect where the waste was generated.

(l) The approved mitigation measures identified in the permit application shall be completed before a facility may accept waste unless a later date is authorized in writing by the Department for technical reasons.

(m) The following radioactive material controlled under specific or general license or order authorized by any Federal, State or other government agency may not be disposed at the facility, unless specifically exempted from disposal restrictions by an applicable State or Federal statute or regulation:

(1) Naturally occurring and accelerator produced radioactive material.

(2) Byproduct material.

(3) Source material.

(4) Special nuclear material.

(5) Transuranic radioactive material.

(6) Low-level radioactive waste.

(n) The following radioactive material may not be disposed at the facility, unless approved in writing by the Department and the disposal does not endanger the environment, facility staff or public health and safety:

(1) Short-lived radioactive material from a patient having undergone a medical procedure.

(2) TENORM.

(3) Consumer products containing radioactive material.

(o) The limitations in subsections (m) and (n) do not apply to radioactive material as found in the undisturbed natural environment of this Commonwealth.

(p) The operator may not accept construction/demolition waste that has been processed to the point that individual components cannot be identified, unless approved by the Department in the permit.

§ 277.202. Areas where construction/demolition waste landfills are prohibited.

(a) Except for areas that were permitted as a construction/demolition waste landfill prior to April 9, 1988, a construction/demolition waste landfill may not be operated as follows:

(1) *Floodplain.* In the 100-year floodplain of waters of this Commonwealth, unless the Department approves in a permit an equivalent method of protecting the facility from a 100-year flood consistent with the Flood Plain Management Act (32 P. S. §§ 679.101—679.601) and the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

(2) *Wetland.*

(i) In or within 300 feet of an exceptional value wetland, as defined in § 105.17 (relating to wetlands).

(ii) For a construction/demolition waste landfill permitted on or after December 23, 2000, other than an expansion of a construction/demolition waste landfill that was permitted prior to December 23, 2000, in or within 100 feet of a wetland other than an exceptional value wetland, unless storage, processing and disposal will not occur within that distance and one of the following applies:

(A) If the operation is in or along the wetland, the operator has received a permit from the Department under Chapter 105 (relating to dam safety and waterway management).

(B) If the operation is not in or along the wetland, no adverse hydrologic or water quality impacts will result.

(3) *Coal-existing facility.* For a construction/demolition waste landfill permit issued prior to December 23, 2000, in coal bearing areas underlain by recoverable or mineable coals, unless the operator of the facility demonstrates and the Department finds, in writing, that the operator owns the underlying coal, or has entered an agreement with the owner of the coal to provide support.

(4) *Coal—expansion.* For an expansion of a construction/demolition waste landfill permitted between April 9, 1988, and December 23, 2000, in coal bearing areas underlain by recoverable or mineable coals, unless one of the following is met:

(i) The applicant owns the underlying coal.

(ii) The following requirements are met:

(A) The applicant owned or entered into an enforceable option contract to purchase the land on which the expansion would operate on or before December 23, 2000, and still holds the option rights, still owns the land or owns the land pursuant to the option rights contract when the permit expansion is issued.

(B) Coal providing support for the expansion area will not be mined as long as waste remains on the site, as demonstrated under § 277.120 (relating to mineral deposits information).

(5) *Coal—new landfill.* For a new construction/demolition waste landfill permitted on or after December 23, 2000, in coal bearing areas underlain by recoverable or mineable coal, unless the permittee owns the underlying coal.

(6) *Valley, ravine or head of hollow.* In a valley, ravine or head of hollow where the operation would result in the elimination, pollution or destruction of a portion of a perennial stream, except that rechanneling may be al-

lowed as provided in Chapter 105 (relating to dam safety and waterway management).

(7) *Limestone or carbonate formation.* In areas underlain by limestone or carbonate formations where the formations are greater than 5 feet in thickness and present at the topmost geological unit. The areas include an area mapped by the Pennsylvania Geological Survey as underlain by these formations, unless competent geologic studies demonstrate the absence of limestone and carbonate formations under the site.

(8) *Occupied dwelling—existing facility.* Except as provided in paragraphs (9) and (10), a construction/demolition waste landfill may not be operated within 300 feet measured horizontally from an occupied dwelling, unless the current owner of the dwelling has provided a written waiver consenting to the facility being closer than 300 feet. Except as provided in paragraphs (9) and (10), the disposal area of a construction/demolition waste landfill may not be within 500 feet measured horizontally from an occupied dwelling, unless the current owner has provided a written waiver consenting to the disposal area being closer than 500 feet. A waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner.

(9) *Occupied dwelling—expansion.* For a permitted construction/demolition waste landfill that was operating and not closed as of December 23, 2000, an expansion permitted on or after December 23, 2000, may not be operated within 900 feet measured horizontally from an occupied dwelling, unless one or both of the following conditions are met:

(i) The owner of the dwelling has provided a written waiver consenting to the facility or disposal area being closer than 900 feet. A waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(ii) The applicant owned or entered into an enforceable option contract to purchase the land on which the expansion would operate on or before December 23, 2000, and still holds the option rights, still owns the land or owns the land pursuant to the option rights contract when the permit expansion is issued. Even if the requirement of this subparagraph is met, the expansion may not be operated within 300 feet measured horizontally from an occupied dwelling and the disposal area may not be within 500 feet measured horizontally from an occupied dwelling.

(10) *Occupied dwelling—new landfill.* A new construction/demolition waste landfill permitted on or after December 23, 2000, may not be operated within 900 feet measured horizontally from an occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to the facility being closer than 900 feet. A waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner. A closed landfill that submits an application to reopen and expand shall also be subject to this paragraph.

(11) *Occupied dwelling—access road.* Notwithstanding the prohibitions in paragraphs (9) and (10), an access road to a construction/demolition waste landfill may not be operated within 300 feet measured horizontally from an occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to the access road being closer than 300 feet. A waiver shall be

knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(12) *Perennial stream.* Within 100 feet of a perennial stream, unless storage, processing and disposal will not occur within that distance and no adverse hydrologic or water quality impacts will result.

(13) *Property line.* Within 100 feet of a property line, unless one of the following applies:

(i) Actual disposal of waste will not occur within that distance.

(ii) The current owner has provided a written waiver consenting to the facility being closer than 100 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner.

(14) *Water source.* Within 1/4 mile upgradient, and within 300 feet downgradient, of a public or private water source for disposal, processing and storage areas, except that the Department may waive or modify these isolation distances if the operator demonstrates and the Department finds, in writing, that the following conditions have been met:

(i) The owners of the public and private water sources in the isolation area have consented, in writing, to the location of the proposed facility.

(ii) The operator and each water source owner have agreed, in writing, that the applicant will construct and maintain at the operator's expense a permanent alternative water supply of like quantity and quality at no additional cost to the water source owner if the existing source is adversely affected by the facility.

(iii) The applicant has demonstrated that a replacement water source is technically and economically feasible and readily available for every public or private water source in the isolation area.

(15) *School, park or playground.*

(i) For a construction/demolition waste landfill permit issued on or after December 23, 2000, other than an expansion of a construction/demolition waste landfill that was permitted prior to December 23, 2000, within 300 yards of:

(A) A building which is owned by a school district or school and used for instructional purposes.

(B) A park.

(C) A playground.

(ii) The current property owner of a school, park or playground may waive the 300-yard prohibition by signing a written waiver. Upon receipt of the waiver, the Department will waive the 300-yard prohibition and will not use the prohibition as the basis for the denial of a new permit.

(16) *Obstruction.* For areas permitted on or after December 23, 2000, in a manner in which any portion of the landfill would be an obstruction to air navigation under 14 CFR 77.23(a)(5) (relating to standards for determining obstructions).

(b) Except as provided in subsection (c), this section does not apply to features that may come into existence after the date of the first newspaper notice of the filing of a permit application under § 271.141 (relating to public notice by applicant).

(c) This section does not apply to features that may come into existence after the date of the first newspaper notice under this subsection if the following apply:

(1) The person or municipality publishes a notice of intent to file an application for a construction/demolition waste landfill permit. The notice, which is separate from the newspaper notice required by § 271.141, shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the facility is proposed to be located. The notice shall include a brief description of the location and proposed operation of the facility.

(2) The person or municipality files an administratively complete application under § 271.202 (relating to receipt of application and completeness review) with the Department within 1 year from the date of the first newspaper notice under this subsection.

§ 277.203. Certification.

(a) The operator shall submit a certification by a registered professional engineer on forms provided by the Department upon completion of each major construction activity identified in the permit for each phase or sequence of construction at the facility. Major construction activities include:

(1) Construction of groundwater monitoring system.

(2) Construction of the subbase.

(3) Construction of the leachate detection zone.

(4) Construction of the liner.

(5) Construction of the protective cover and the collection system within the protective cover.

(6) Placement of attenuating soil at an expansion of a construction/demolition waste landfill permitted prior to December 23, 2000.

(7) Construction of a leachate treatment facility.

(8) Construction of a sedimentation pond.

(9) Closure.

(10) Final closure.

(11) Construction of the landfill gas extraction system.

(b) The certification shall describe the construction activity and the phase or sequence of construction being certificated, using drawings and plans if appropriate. The certification shall state that the actual construction was observed by the engineer or persons under his direct supervision, and that the supervision was carried out in a manner consistent with the approved permit.

(c) Upon completion of each construction activity described in subsection (a) other than construction of any leachate treatment facility, the operator shall notify the Department that the construction activity is ready for inspection. No waste may be disposed in the area subject to the inspection until the Department has conducted an inspection and has transmitted its written approval to the permittee indicating that construction was done according to the permit.

(d) The closure and final closure activities will not be deemed complete until the Department has certified completion of closure and final closure activities.

DAILY OPERATIONS

§ 277.211. Signs and markers.

(a) A person or municipality that operates a construction/demolition waste landfill shall identify the

facility for the duration of operations by posting and maintaining a sign which is clearly visible and can be easily seen and read at the junction of each access road and public road. The sign shall be constructed of a durable, weather-resistant material. The sign shall show the name, business address and telephone number of the person who operates the facility, the operating hours of the facility and the number of the current permit authorizing operation of the facility.

(b) Permanent physical markers for the grid coordinate system and permit area markers shall:

(1) Be posted and maintained for the duration of the operations to which they pertain.

(2) Be clearly visible, readable and uniform throughout the operation.

(3) Be permanently fixed and made of a durable material.

(c) The perimeter of the site shall be clearly marked before the beginning of operations. The perimeter of a disposal area shall be clearly marked before the beginning of construction/demolition waste disposal within that area.

(d) The permanent physical markers for the grid coordinate system shall be installed at the locations set forth in the permit, prior to the beginning of operations. The base line of the grid system shall be marked with two permanent monuments that show elevation.

§ 277.212. Access control.

(a) A gate or other barrier shall be maintained at potential vehicular access points to block unauthorized access to the site when an attendant is not on duty.

(b) The operator shall maintain a fence or other suitable barrier around the site, including impoundments, and leachate collection and treatment systems, sufficient to prevent unauthorized access.

(c) Access to the site shall be limited to times when an attendant is on duty.

§ 277.213. Access roads.

(a) An access road shall be designed, constructed and maintained to prevent erosion to the maximum extent possible and to prevent contributions of sediment to streams or runoff outside the site.

(b) A crossing of a perennial or intermittent stream or a wetland shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachments or water obstructions shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) An access road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 25-year, 24-hour precipitation event. For roads that are used or in existence for more than 30 days, the drainage system shall include sloped or crowned road surfaces, cross drains or culverts, stabilized ditches, erosion resistant surfacing, sediment traps and other appropriate measures as required by § 277.242 (relating to soil erosion and sedimentation control).

(d) An access road shall be paved or surfaced with asphalt, gravel, cinders or other equivalent material approved by the Department in the permit. An access road shall be capable of withstanding the load limits projected by the applicant under § 277.134 (relating to

plan for access roads). The maximum sustained grade of an access road may not exceed 12%.

(e) For roads leading to the waste disposal area, a landfill shall maintain a minimum cartway width of one of the following:

(1) Twenty-two feet for two-way traffic.

(2) Twelve feet for one-way traffic with pull-off intervals every 100 yards or a greater distance where there is a clear view of approaching vehicles.

(f) An access road shall be designed, constructed and maintained to allow the orderly egress and ingress of vehicular traffic when the facility is in operation, including during inclement weather.

(g) An access road negotiable by loaded collection vehicles shall be provided from the entrance gate of the facility to unloading areas. An access road shall be provided to each treatment facility impoundment and groundwater monitoring point. Other monitoring points shall be readily accessible.

(h) Disturbed areas adjacent to a road shall be vegetated or otherwise stabilized to prevent erosion.

(i) An access road shall be maintained to control dust and to prevent or control the tracking of mud on and off the site.

§ 277.214. Measurement and inspection of waste.

(a) An operator of a construction/demolition waste landfill that has received, is receiving or will receive 30,000 or more cubic yards of solid waste in a calendar year shall weigh solid waste when it is received. The scale used to weigh solid waste shall conform to 3 Pa.C.S. Chapter 41 (relating to Consolidated Weights and Measures Act) and 70 Pa. Code Part I (relating to general provisions). The operator of the scale shall be a licensed public weighmaster under 3 Pa.C.S. Chapter 41 and 70 Pa. Code Part I.

(b) The operator shall accurately measure waste by volume or weight prior to unloading.

§ 277.215. Equipment.

(a) The operator shall maintain on the site equipment necessary for the operation of the facility in accordance with the permit. The equipment shall be maintained in operable condition.

(b) If a breakdown of the operator's equipment occurs, the operator shall utilize standby equipment as necessary to comply with the act, the environmental protection acts, this subchapter and its permit conditions.

§ 277.216. Unloading and compaction.

(a) An attendant or clearly marked signs shall direct vehicles to the unloading area.

(b) The operator shall ensure that collection vehicles unload waste promptly in unloading areas. Construction/demolition waste shall be unloaded only in unloading areas designated in the approved permit.

(c) Construction/demolition waste shall be spread and compacted in shallow layers sufficient to minimize void spaces during placement of lifts.

(d) The working face shall be kept to a size which can be easily compacted.

§ 277.217. Air resources protection.

(a) The operator shall implement fugitive air contaminant control measures and otherwise prevent and control air pollution under the Air Pollution Control Act (35 P. S.

§§ 4001—4014), Article III (relating to air resources) and § 277.218 (relating to nuisance minimization and control). Minimization and control measures shall include the following:

(1) Ensuring that operation of the facility will not cause or contribute to the exceeding of ambient air quality standards under § 131.3 (relating to ambient air quality standards).

(2) Ensuring that no open burning occurs at the facility.

(3) Minimizing the generation of fugitive dust emissions from the facility.

(b) The operator shall comply with the terms and conditions of an air quality plan approval and air quality operating permit issued to the facility under Chapter 127 (relating to construction, modification, reactivation and operation of sources).

§ 277.218. Nuisance minimization and control.

(a) *Vectors.* An operator may not cause or allow the attraction, harborage or breeding of vectors.

(b) *Odors.*

(1) An operator shall implement the plan approved under § 277.136 (relating to nuisance minimization and control plan) to minimize and control public nuisances from odors. If the Department determines during operation of the facility that the plan is inadequate to minimize or control public nuisances, the Department may modify the plan or require the operator to modify the plan and obtain Department approval.

(2) An operator shall perform regular, frequent and comprehensive site inspections to evaluate the effectiveness of cover, capping, gas collection and destruction, waste acceptance and all other waste management practices in reducing the potential for offsite odor creation.

(3) An operator shall promptly address and correct problems and deficiencies discovered in the course of inspections performed under paragraph (2).

(c) *Other.* An operator shall implement the plan approved under § 277.136 to minimize and control other conditions that are harmful to the environment or public health, or which create safety hazards, odors, dust, noise, unsightliness and other public nuisances.

§ 277.221. Daily volume.

(a) A person or municipality operating a construction/demolition waste landfill may not receive solid waste at the landfill in excess of the maximum or average daily volume approved in the permit.

(b) The average daily volume is a limit on the volume of solid waste that is permitted to be received at the facility, and shall be computed quarterly by averaging the total volume received over the quarter.

§ 277.222. Radiation monitoring and response.

(a) An operator shall implement the action plan approved under § 277.140 (relating to radiation protection action plan).

(b) An operator shall monitor incoming waste in accordance with the Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, Document Number 250-3100-001 or in a manner at least as protective of the environment, facility staff and public health and safety. Monitoring

shall meet the requirements of this section and the facility's approved radiation protection action plan.

(c) Radiation detector elements shall be as close as practical to the waste load and in an appropriate geometry to monitor the waste. The radiation monitoring system shall be set to alarm at a level no higher than 10 microrentgen per hour ($\mu\text{R/hr}$) above the average background at the facility when any of the radiation detector elements is exposed to a cesium-137 gamma radiation field. Radiation detector elements shall be shielded to maintain the average background below 10 $\mu\text{R/hr}$. If capable of energy discrimination, the radiation monitoring system shall be set to detect gamma rays of a 50 kiloelectron volt (keV) energy and higher.

(d) An operator shall have portable radiation monitors capable of determining the radiation dose rate and presence of contamination on a vehicle that has caused an alarm. Upon a confirmed exceedance of the alarm level in subsection (c), a radiological survey of the vehicle shall be performed.

(e) An operator shall notify the Department immediately and isolate the vehicle when radiation dose rates of 20 $\mu\text{Sv}^{\text{h}^{-1}}$ (2 mrem $^{\text{h}^{-1}}$) or greater are detected in the cab of a vehicle, 500 $\mu\text{Sv}^{\text{h}^{-1}}$ (50 mrem $^{\text{h}^{-1}}$) or greater are detected from any other surface, or contamination is detected on the outside of the vehicle.

(f) Monitoring equipment shall be calibrated at a frequency specified by the manufacturer, but not less than once a year.

(g) If radioactive material is detected, the vehicle containing the radioactive material may not leave the facility without written Department approval and an authorized United States Department of Transportation exemption form.

COVER AND REVEGETATION

§ 277.231. (Reserved).

§ 277.232. Intermediate cover and slopes.

(a) The operator shall provide intermediate cover on lifts every 50 feet horizontally or at the end of each working week, whichever comes first, by placing a compact and uniform cover on the working face and on the side slopes. Nonfriable asbestos containing waste shall be covered within 24 hours after depositing with at least 6 inches of nonasbestos containing cover material.

(b) The composition of the intermediate cover material shall meet the following performance standards. The intermediate cover shall:

(1) Cover solid waste after it is placed without change in its properties and without regard to weather.

(2) Be capable of allowing loaded vehicles to successfully maneuver over it after placement.

(3) Be capable of controlling fires.

(4) Be consistent with the waste acceptance plan for the facility.

(5) Stabilize the filled area.

(6) Control infiltration of precipitation and erosion and sedimentation.

(7) Be capable of supporting the germination and propagation of vegetative cover as required by §§ 277.234 and 277.235 (relating to vegetation; and standards for successful revegetation) unless vegetative cover is not necessary to control infiltration of precipitation and erosion and sedimentation.

(c) Unless alternative design requirements to meet the performance standards in subsection (b) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), intermediate cover shall meet the following design requirements:

(1) If soil or soil-like, be at least 12 inches in thickness.

(2) If soil or soil-like material is used, the layer shall be uniformly graded.

(d) A 2-week supply of cover material shall be maintained onsite.

(e) If intermediate cover requires vegetation to meet the performance standards in subsection (b), the vegetation shall be established within 30 days.

(f) Slopes constructed during daily landfilling activities may not exceed 50%.

§ 277.233. Final cover and grading.

(a) The operator shall provide final cover in the following manner:

(1) A cap shall be placed and graded over the entire surface of each final lift. The following performance standards for the cap shall be met:

(i) The cap shall have a permeability less than or equal to the permeability of the primary liner or a permeability no greater than 1×10^{-7} cm/sec, whichever is less.

(ii) The cap shall be resistant to physical and chemical failure.

(iii) The cap shall cover all areas where waste is disposed.

(2) A drainage layer capable of transmitting flow and preventing erosion of the soil layer shall be placed over the cap.

(3) A uniform and compacted layer of soil at least 2 feet in thickness shall be placed over the drainage layer.

(4) For a construction/demolition waste landfill permitted prior to December 23, 2000, that does not have a liner, the Department may waive or modify the cap and drainage layer.

(b) The operator shall place final cover within 1 year after disposal in the final lift ceases or as soon thereafter as weather permits, unless the Department, in the permit, allows a later period based on a demonstration that a later period is necessary to protect the final cover from differential settlement of waste at the facility. The Department will not allow a later period unless, at a minimum, delayed installation will not cause or allow a violation of this article, the act or the environmental protection acts. For a construction/demolition waste landfill constructed with attenuating soil and permitted prior to December 23, 2000, or for an expansion of a landfill under § 277.110 (relating to modification to expand existing landfill), the Department may waive the final cover requirements in subsection (a) when the approved postclosure land use makes a cap and drainage layer unnecessary.

(c) Unless alternative design requirements to meet the performance standards in subsection (a)(1)(i)—(iii) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the cap shall meet the design requirements set forth for caps in Table I in § 277.255 (relating to liners) which will not result in a permeability greater than that of the primary liner.

(d) The layer of material described in subsection (a)(3) shall meet the following performance standards. The layer shall:

(1) Be capable of allowing loaded vehicles to successfully maneuver over it after placement.

(2) Be capable of controlling fires.

(3) Be capable of supporting the germination and propagation of vegetative cover as required by §§ 277.234 and 277.235 (relating to revegetation; and standards for successful revegetation).

(4) Ensure slope stability.

(e) Unless alternative design requirements to meet performance standards in subsection (d) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the layer of material described in subsection (a)(3) shall meet the following design requirements:

(1) The cover soil shall fall within the United States Department of Agriculture textural classes of sandy loam, loam, sandy clay loam, silty clay loam, loamy sand and silt loam as defined in the *Soil Survey Manual* published by the United States Department of Agriculture, Soil Conservation Service (available from the Department or the Northeast National Technical Center of the Soil Conservation Service, 160 E. 7th Street, Chester, Pennsylvania 19103-6092).

(2) At least 40% by weight of the cover soil shall be capable of passing through a 2 millimeter, no. 10 mesh sieve.

(f) The grade of final slopes shall be designed, installed and maintained to:

(1) Ensure permanent slope stability.

(2) Control erosion due to rapid water velocity and other factors.

(3) Allow compaction, seeding and revegetation of cover material placed on the slopes.

(4) Ensure minimal percolation of precipitation and surface runoff into the disposal area.

(g) Unless the Department authorizes a different slope design in the permit based on a demonstration that the different design can meet the requirements of subsection (f), slopes shall be designed, installed and maintained as follows:

(1) The grade of the final surface of the facility may not be less than 3%.

(2) If the Department approves final grades of more than 15%:

(i) The operator shall construct a horizontal terrace at least 15 feet wide on the slope for every 25 feet maximum rise in elevations of the slope. The terrace width shall be measured as the horizontal distance between slope segments.

(ii) The gradient of the terrace shall be 5% into the landfill.

(iii) Drainage ditches shall be constructed in each horizontal terrace to convey flows.

(3) An operator may not leave final slopes that have a grade exceeding 33%, including slopes between benched terraces.

WATER QUALITY PROTECTION

§ 277.241. General requirements.

(a) The operator may not cause or allow a point or nonpoint source discharge of pollution from or on the facility to surface waters of this Commonwealth.

(b) A construction/demolition waste landfill shall be operated to prevent and control surface and groundwater water pollution. An operator shall operate and maintain necessary surface and groundwater treatment facilities until surface or groundwater pollution from or on the facility has been permanently abated.

(c) The operator may not cause or allow water pollution within or outside of the site from operation of the facility.

§ 277.245. Water supply replacement.

(a) A person or municipality operating a construction/demolition waste landfill which adversely affects a water supply by degradation, pollution or other means shall restore or replace the affected water supply with an alternate source that is of like quantity and quality to the original supply at no additional cost to the owner. For purposes of this section, the term "water supply" includes existing, currently designated or currently planned sources of water or facilities or systems for the supply of water for human consumption or for agricultural, commercial, industrial or other legitimate use, including the uses protected by the applicable provisions of Chapter 93 (relating to water quality standards).

(b) A temporary water supply shall be provided as soon as practicable but not later than 48 hours after one of the following:

(1) Receipt of information showing that the operator is responsible for adversely affecting the water supply.

(2) Receipt of notice from the Department that the operator is responsible for adversely affecting the water supply.

(c) A permanent water supply shall be provided as soon as practicable but not later than 90 days after one of the following:

(1) Receipt of information showing that the operator is responsible for adversely affecting the water supply.

(2) Receipt of notice from the Department that the operator is responsible for adversely affecting the water supply.

(d) Permanent water supplies include development of a new well with a distribution system, interconnection with a public water supply or extension of a private water supply, but do not include provision of bottled water or a water tank supplied by a bulk water hauling system, which are temporary water supplies.

LINER SYSTEM

§ 277.251. Scope and requirements.

(a) A person or municipality operating a construction/demolition waste landfill, other than a construction/demolition waste landfill constructed with attenuating soil and permitted prior to December 23, 2000, or for an expansion of a landfill under § 277.122 (relating to modification to expand existing landfill), shall design, construct, operate and maintain a liner system for disposal areas of the facility or components thereof under this section and §§ 277.252—277.260 (relating to liner system).

(b) The liner system shall consist of the following elements:

(1) Subbase, which is the prepared layer of soil or earthen material upon which the remainder of the liner system is constructed.

(2) Leachate detection zone, which is the prepared layer placed on top of the subbase and upon which the liner is placed, and in which a leachate detection system is located.

(3) Liner, which is a continuous layer of remolded clay or synthetic material placed on the leachate detection zone.

(4) Protective cover and leachate collection zone, which is a prepared layer placed over the liner in which a leachate collection system is located.

§ 277.252. General limitations.

(a) The bottom of the subbase of the liner system cannot be in contact with the seasonal high water table or perched water table without the use of groundwater pumping systems.

(1) Soil mottling may indicate the presence of a seasonal high groundwater table.

(2) Drainage systems may be utilized to prevent contact between the bottom of the subbase of the liner system and the seasonal high water table or perched water table. The operator may not use a drainage system if the system is likely to adversely affect the quality or quantity of water provided by public or private water supply, even if a replacement supply is available under § 277.245 (relating to water supply replacement). The drainage system shall be limited to drain tile, piping and french drains.

(b) At least 8 feet shall be maintained between the bottom of the subbase of the liner system and the regional groundwater table in an unconfined aquifer. The regional groundwater table may not be artificially lowered.

(c) In a confined aquifer, at least 8 feet shall be maintained between the bottom of the subbase of the liner system and the top of the confining layer or the shallowest level below the bottom of the subbase where groundwater occurs as a result of upward leakage from natural or preexisting causes. The integrity of the confining layer may not be compromised by excavation.

(d) If the approved design plans provide for the placement of additional adjacent liner:

(1) Waste may not be placed within 25 feet of an edge of the liner.

(2) The edge of the liner shall be protected by soil cover, or another material approved in the permit, until additional liner is added.

(3) A lined berm at least 4 feet high shall be constructed and maintained to prevent the lateral escape of leachate.

(4) Adequate spacing shall be maintained on the inside of the berm to collect stormwater and sediment.

(e) If the approved design plans do not provide for the placement of additional adjacent liner, waste may not be placed within 15 feet of the inside top of the lined perimeter berm.

(f) A lined perimeter berm at least 4 feet high shall be constructed and maintained along the edge of the lined disposal area to prevent the lateral escape of leachate.

(g) The edge of the liner shall be clearly marked.

§ 277.253. Subbase.

(a) The subbase shall meet the following performance standards. The subbase shall:

(1) Bear the weight of the liner system, waste, waste cover material and equipment operating on the facility without causing or allowing a failure of the liner system.

(2) Accommodate potential settlement without damage to the liner system.

(b) Unless alternative design requirements to meet the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the subbase shall meet the following design requirements. The subbase shall:

(1) Be at least 6 inches thick and compacted to a standard proctor density of at least 95%.

(2) Be no more permeable than 1×10^{-5} cm./sec., based on laboratory and field testing unless the clay component of a composite liner is designed and constructed directly above the subbase.

(3) Be hard, uniform, smooth and free of debris, rock, plant materials and other foreign material.

(4) Have a postsettlement slope of at least 2% and no more than 33%.

§ 277.254. Leachate detection zone.

(a) The leachate detection zone shall meet the following performance standards. The leachate detection zone shall:

(1) Rapidly detect and collect liquid entering the leachate detection zone, and rapidly transmit the liquid to the leachate treatment system.

(2) Withstand chemical attack from waste or leachate.

(3) Withstand anticipated loads, stresses and disturbances from overlying waste, waste cover materials and equipment operation.

(4) Function without clogging.

(5) Prevent the liner from cracking, tearing, stretching or otherwise losing its physical integrity.

(6) Cover the bottom and sidewalls of the facility.

(b) Unless alternative design requirements to meet the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the leachate detection zone of a liner system shall meet the following design requirements:

(1) Be at least 12 inches thick.

(2) Contain no material exceeding 0.5 inches in particle size.

(3) Create a flow zone between the subbase and the liner more permeable than 1×10^{-2} cm./sec. based on laboratory testing and, when required by the Department, field testing.

(4) Contain a perforated piping system capable of detecting and intercepting liquid within the leachate detection zone and conveying the liquid to a collection sump for storage, processing or disposal. The sump shall be separate from the leachate collection sump and shall be of a sufficient size to transmit leachate that is generated. The piping system shall also meet the following:

(i) The slope, size and spacing of the piping system shall assure that liquids drain from the leachate detection zone.

(ii) The pipes shall be installed primarily perpendicular to the flow and shall have a minimum postsettlement grade of at least 2%.

(iii) The minimum diameter of the perforated pipe shall be 4 inches with a wall thickness of Schedule-80 or greater as specified by ASTM or equivalent.

(iv) The pipes shall be cleaned and maintained as necessary.

(5) The leachate detection zone shall have a minimum bottom slope of 2%.

(6) Contain stone or aggregates without sharp edges.

(c) The operator shall monitor the leachate detection zone weekly to determine whether liquid is flowing from the zone.

(d) If liquid is flowing from the leachate detection zone the operator shall:

(1) Immediately notify the Department in writing.

(2) Estimate, on a weekly basis, the volume of liquid flowing from the zone.

(3) Sample and analyze the liquid, on a quarterly basis, for pH, specific conductivity, total organic carbon and chlorides. The Department may also require sampling and analyses for other constituents expected to be found in the waste.

(4) Provide written copies of the flow and analysis data to the Department.

(e) If leachate flow is greater than 100 gallons per acre of lined collection area per day or more than 10% of leachate generation, the operator shall:

(1) Submit to the Department a plan within 30 days for locating the source of leachate in the leachate detection zone, and for determining the severity and cause of leachate penetration.

(2) Implement the plan upon Department approval, and complete the plan in a reasonable time not to exceed 6 months.

(3) Submit to the Department, within 45 days after completion of the plan, a report containing the new data collected, analysis of the data and recommendations concerning a remedial plan.

(4) Conduct quarterly sampling and analysis for the parameters in § 277.284(1) (relating to sampling and analysis), and submit copies of the results of the analysis to the Department.

(f) If sampling results indicate the presence of constituents at concentrations that could result in degradation of groundwater, the operator shall:

(1) Submit to the Department a remedial plan for controlling the source of leachate in the leachate detection zone, and implement the plan upon Department approval.

(2) Submit to the Department a permit modification application under § 271.222 (relating to permit modification) for increased groundwater monitoring, giving consideration to monitoring frequency, number of wells and other factors, and conduct increased groundwater monitoring upon Department approval of the application.

§ 277.255. Liner.

(a) The liner shall meet the following standards of performance:

(1) The liner shall prevent the migration of leachate through the liner to the greatest degree that is technologically possible.

(2) The effectiveness of the liner in preventing the migration of leachate may not be adversely affected by the physical or chemical characteristics of solid waste, solid waste constituents or leachate from the facility.

(3) The liner shall be resistant to physical failure, chemical failure and other failure from the sources identified under § 277.161(d) (relating to liner system and leachate control plan).

(b) Unless alternative design requirements to meet the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the liner shall meet, at a minimum, the requirements of the table in subsection (f).

(c) A liner shall:

(1) Be no more permeable than 1×10^{-7} cm./sec. based on laboratory and field testing.

(2) For synthetic liners, be installed according to manufacturer's specifications under the supervision of an authorized representative of the manufacturer. An approved assurance and quality control program shall be implemented in the field during the installation of the liner.

(3) For remolded clay liners, be designed, installed and maintained according to a quality assurance and quality control plan approved by the Department.

(4) Be inspected for uniformity, damage and imperfections during construction and installation.

(d) Liners made of clay, bentonite and bentonite-like materials shall be constructed in compacted lifts not exceeding 6 inches in depth unless the operator submits data from a field demonstration validating the suitability of compacted lifts greater than 6 inches. A lift shall be scarified before placement of the next lift.

(e) The operator may design, construct, operate and maintain a composite liner.

(1) The liner shall have the following components:

(i) An upper component made of a manufactured geosynthetic liner that meets the requirements of this section independently of the composite component.

(ii) A lower component made of earthen material that meets the requirements of this section independently of the upper component.

(2) The two components of the composite liner shall be designed, constructed and maintained to provide a compression connection, or direct continuous contact, between them.

(f) A facility or a component thereof that is subject to this chapter may not have a liner based upon natural attenuation of leachate.

TABLE I

MINIMUM LINER DESIGN STANDARDS
Minimum Field

Liner Material	Function	Thickness (Units as Specified)	Liner Density (Tests as Specified)	Remarks
Geosynthetic	Liner, Cap	30 mil 30 mil	NA	1. A greater thickness may be required depending upon the recommendations of the manufacturer. 2. HDPE liners shall be at least 60 mil.
Natural & Remolded Clay	Liner, Cap Composite Component	2 feet 1 foot 2 feet	90%* 90%* ≥90%*	1. Minimum of 30% fines by weight less than 0.074 mm particle size (#200 sieve). 2. Plasticity index. 3. No coarse fragments greater than 3/4 inch in diameter.
Sodium Bentonite & Bentonite- like materials	Liner, Cap Composite Component	1 foot 1 foot 1 foot	≥90%* ≥90%* ≥90%*	1. Minimum of 8% powdered sodium bentonite or manufacturer's recommendations, whichever is greater. 2. No coarse fragments greater than 3/4 inch in diameter. 3. No organic matter. Minimum of 3/4 pound of powdered or granular sodium bentonite per square foot.
Geosynthetic Clay liner (GCL)	Composite Component	N/A	N/A	

*Percentage is of maximum theoretical density when using Marshall method of design, and percentage of maximum when using Standard Proctor method of design (Pa. PTM No. 106, Method B).

§ 277.256. Protective cover.

(a) The protective cover shall meet the following performance standards. The protective cover shall:

(1) Protect the primary liner from physical damage from stresses and disturbances from overlying wastes, waste cover materials and equipment operation.

(2) Protect the leachate collection system within the protective cover from stresses and disturbances from overlying wastes, waste cover materials and equipment operation.

(3) Allow the continuous and free flow of leachate into the leachate collection system within the protective cover.

(b) Unless alternative design requirements to meet the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the protective cover shall meet the following design requirements. The protective cover shall be:

(1) Comprised of clean earth material that contains no aggregate, rocks, debris, plant material or other solid material larger than 1/2 inch in diameter, and no material with sharp edges.

(2) As permeable as, or more permeable than, 1×10^{-2} cm./sec., based on field testing, and shall allow the free flow of liquids and leachate passing through or generated by solid waste.

(3) At least 18 inches in thickness.

§ 277.257. Leachate collection system within protective cover.

(a) The leachate collection system within the protective cover shall meet the following performance standards. The leachate collection system shall:

(1) Ensure that free flowing liquids and leachate will drain continuously from the protective cover to the leachate treatment system without ponding or accumulating on the liner.

(2) Ensure that the depth of leachate on or above the primary liner does not exceed 1 foot.

(3) Withstand chemical attack from leachate.

(4) Withstand anticipated loads, stresses and disturbances from overlying waste, waste cover materials and equipment operation.

(5) Function without clogging.

(6) Cover the bottom and sidewalls of the facility.

(b) Unless alternative design requirements to the performance standards in subsection (a) are approved as part of the permit under § 271.231 (relating to equivalency review procedure), the leachate collection system within the protective cover shall comply with the following design requirements:

(1) The leachate collection system shall include a perforated piping system which is capable of intercepting free flowing liquids and leachate within the protective cover and conveying them to a collection sump for storage, processing or disposal. The collection sump shall be of sufficient size to transmit leachate that is generated and shall be capable of automatic and continuous functioning.

(2) The perforated piping system shall be sloped, sized and spaced to assure that free flowing liquids and leachate will drain continuously from the protective cover to the collection sump point.

(3) The minimum diameter of the perforated pipes shall be 6 inches with a wall thickness of Schedule 80 or greater as specified by ASTM, or equivalent.

(4) The leachate collection system shall contain stones or aggregates.

(5) The pipes shall be installed primarily perpendicular to the flow and shall have a postsettlement grade of at least 2%.

(6) The leachate collection system shall be cleaned and maintained as necessary.

(7) The leachate collection system shall have a minimum bottom slope of 2%.

§ 277.259. Noncoal mine disposal.

(a) Notwithstanding the provisions of § 277.252 (relating to general limitations) relating to disposal above the seasonal highwater table, perched water table and regional groundwater table, the Department may issue a permit for an expansion of a construction/demolition waste landfill in an abandoned noncoal mine permitted prior to December 23, 2000.

(b) In addition to other applicable requirements, a person or municipality that operates a construction/demolition waste landfill in an abandoned noncoal mine shall:

(1) Pump and treat leachate and groundwater from the facility, and treat the leachate and groundwater to the extent required by The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and regulations thereunder, until the leachate and the facility are no longer capable of causing surface water or groundwater pollution.

(2) Minimize the inflow of surface water and groundwater to the facility, including measures such as grouting of fractures or fault zones.

(3) Use and maintain collection piping, wetwell and pumps that have a safety factor of 2, and provide redundant piping and pumping systems.

(4) Use daily cover materials that will preclude the perching of leachate and lateral channeling within the landfill.

(5) Restore the site of its approximate original contour.

(6) Not operate the landfill in a limestone or carbonate rock quarry.

(7) Comply with the applicable provisions of the Noncoal Surface Mining and Conservation Act (52 P. S. §§ 3301—3326).

LEACHATE TREATMENT**§ 277.272. Basic treatment methods.**

(a) Except as otherwise provided in this section, leachate shall be collected and handled by direct discharge into a permitted publicly owned treatment works, following pretreatment, if pretreatment is required by Federal, State or local law or by discharge into another permitted treatment facility.

(b) Leachate may be collected and handled by onsite treatment and discharge into a receiving stream under a permit issued by the Department under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and regulations thereunder, if the Department approves this method in a construction/demolition waste landfill permit. This method will not be allowed unless, at a minimum, direct discharge into a publicly-owned treatment works or other permitted treatment facility is not practicable.

(c) Leachate may be collected and handled by spray irrigation following treatment. This method will not be allowed unless, at a minimum:

(1) Discharge into a publicly-owned treatment works or other permitted treatment facility is not practicable.

(2) Discharge of treated leachate into a receiving stream in a manner consistent with The Clean Streams Law and regulations thereunder is not attainable.

(3) Spray irrigation will not cause groundwater pollution.

§ 277.274. Leachate recirculation.

In conjunction with the treatment methods in §§ 277.272 and 277.273 (relating to basic treatment methods; and leachate transportation) recirculation of leachate may be utilized if the following conditions exist:

(1) The area subject to leachate recirculation previously has been filled with solid waste.

(2) There is sufficient municipal waste capacity to absorb the leachate.

(3) The area subject to leachate recirculation is underlain by a leachate collection system.

(4) The leachate recirculation is conducted with an approved piping system located under the intermediate cover, and causes no odors, runoff or ponding.

(5) The leachate is not a hazardous waste.

§ 277.275. Leachate collection and storage.

(a) Impoundments or tanks for storing leachate before or during treatment shall be constructed under §§ 285.122—285.124 (relating to storage tanks; impoundments—general; and impoundments—failure).

(b) An onsite leachate storage system shall be part of each leachate treatment method used by the operator. The storage system shall contain impoundments or tanks for storage of leachate. The tanks or impoundments shall have sufficient storage capacity at least equal to the maximum expected production of leachate for any 30-day period for the life of the facility estimated under § 277.162 (relating to leachate treatment plan) or 250,000 gallons, whichever is greater. No more than 25% of the total leachate storage capacity may be used for flow equalization on a regular basis.

(c) The impoundments or tanks shall be aerated as necessary to prevent and control odors. Impoundments or tanks shall each have a capacity of at least 250,000 gallons, unless otherwise approved by the Department.

(d) The storage capacity of impoundments and tanks at a site shall be increased if additional storage is required prior to each major phase of construction and as otherwise necessary.

(e) Leachate storage capacity may not be considered to include leachate that may have collected in or on the liner system.

(f) Necessary collection and containment systems shall be installed prior to the deposition of solid waste at the site. A leachate treatment or handling system approved by the Department under § 277.162 shall be installed or ready for use prior to the storage or disposal of solid waste at the site.

(g) For a facility permitted after December 23, 2000, underground pipes used for the transport of leachate from the liner system to the leachate storage impoundments or tanks shall be equipped with secondary containment or

comply with § 245.445 (relating to methods for release detection for piping). Secondary containment shall be designed, constructed and installed to direct any release to an area that can be inspected for leaks.

§ 277.276. Leachate analysis and sludge handling.

(a) Upon commencement of leachate flow from the facility, the operator shall sample and analyze the following:

(1) On a daily basis, the average flow rate and volume of leachate flowing from the landfill into the leachate storage and treatment system.

(2) On a quarterly basis, the chemical composition of leachate flowing into the leachate treatment system. The analysis shall be sufficient to determine the impact of leachate on the liner system, the effectiveness of the leachate treatment system, the need for modification of the groundwater monitoring system or the effluent limitations in an NPDES permit and the actual characteristics of leachate from the waste disposed at the facility. For the purpose of this quarterly analysis, the leachate sample shall be collected from the influent storage tank or impoundment and shall be representative of the average mixed influent quality.

(b) Sludges resulting from the treatment of leachate may be disposed at the facility if the sludges are not hazardous under Article VII (relating to hazardous waste management).

§ 277.277. Departmental notice and remedial action.

The operator shall immediately notify the Department and describe remedial steps to be taken whenever:

(1) Operation of the treatment facility in accordance with the approved plan cannot prevent violation of the terms of its permits, The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or the regulations thereunder.

(2) The facility is generating a quality or quantity of leachate that exceeds the design capacity of the onsite pretreatment or treatment system.

(3) The contractual agreement for leachate treatment by an offsite treatment system is breached or expired.

(4) The quality or quantity of waste being disposed at the site changes from that set forth in the permit.

WATER QUALITY MONITORING

§ 277.281. General requirements.

(a) A person or municipality that operates a construction/demolition waste landfill shall install, operate and maintain a monitoring system that can detect the entry of solid waste, solid waste constituents, leachate, contaminants or constituents of decomposition into the groundwater or surface water. The monitoring system shall comply with this section and §§ 277.282—277.288.

(b) A person or municipality may not construct, install or use a monitoring system for a construction/demolition waste landfill until that system has first been approved by the Department, in writing.

§ 277.282. Number, location and depth of monitoring points.

(a) The water quality monitoring system shall accurately characterize groundwater flows, groundwater chemistry and flow systems on the site and adjacent area. The system shall consist, at a minimum, of the following:

(1) At least one monitoring well at a point hydraulically upgradient from the disposal area in the direction of increasing static head that is capable of providing representative data of groundwater not affected by the facility, except when the facility occupies the most upgradient position in the flow system. In that case, sufficient downgradient monitoring wells shall be placed to determine the extent of adverse effects on groundwater from the facility.

(2) At least three monitoring wells at points hydraulically downgradient in the direction of decreasing static head from the area in which solid waste has been or will be disposed. In addition to three downgradient wells, the Department may allow one or more springs for monitoring points if the springs are hydraulically downgradient from the area in which solid waste has been or will be disposed, if the springs are developed and protected in a manner approved by the Department, and if the springs otherwise meet the requirements of this subchapter.

(3) A leachate detection system for the disposal area, when it is required by §§ 277.251 and 277.254 (relating to scope and requirements; and leachate detection zone).

(4) A leachate collection system for the disposal area, when it is required by § 277.251 and § 277.257 (relating to leachate collection system within protective cover).

(5) Surface water monitoring points approved by the Department.

(b) The upgradient and downgradient monitoring wells shall be:

(1) Sufficient in number, location and depth to be representative of water quality.

(2) Located so as not to interfere with routine facility operations.

(3) Located within 200 feet of the permitted disposal area and located at the points of compliance.

(c) In addition to the requirements of subsection (b), upgradient monitoring wells shall be located so that they will not be affected by adverse effect on groundwater from the disposal area.

(d) In addition to the requirements of subsection (b), downgradient monitoring wells shall be located so that they will provide early detection of adverse effect on groundwater from the disposal area.

(e) Wells drilled under this section shall be drilled by drillers licensed under the Water Well Drillers License Act (32 P. S. §§ 645.1—645.13).

(f) The well materials shall be decontaminated prior to installation.

§ 277.283. Standards for wells and casing of wells.

(a) A monitoring well shall be constructed with a screen that meets the following requirements:

(1) The screen shall be factory-made.

(2) The screen may not react with the groundwater being monitored.

(3) The screen shall maximize open area to minimize entrance velocities and allow rapid sample recovery.

(b) A monitoring well shall be filter-packed with chemically inert clean quartz sand, silica or glass beads. The material shall be well-rounded and dimensionally stable.

(c) A monitoring well shall be cased as follows:

(1) The casing shall maintain the integrity of the monitoring well borehole and shall be constructed of material that will not react with the groundwater being monitored.

(2) The minimum casing diameter shall be 4 inches unless otherwise approved by the Department in writing.

(3) The casing shall protrude at least 1 foot aboveground, unless otherwise approved by the Department, and shall be clearly visible.

(4) The casing shall be designed and constructed in a manner that prevents cross contamination between surface water and groundwater.

(5) The annular space above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(6) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the Department in the permit.

(7) Alternative casing designs for wells in stable formations may be approved by the Department.

(d) A monitoring well casing shall be enclosed in a protective casing that shall:

(1) Be of sufficient strength to protect the well from damage by heavy equipment and vandalism.

(2) Be installed for at least the upper 10 feet of the monitoring well, as measured from the well cap with a maximum stick up of 3 feet, unless otherwise approved by the Department in writing.

(3) Be grouted and placed with a cement collar at least 3 feet deep to hold it firmly in position.

(4) Be numbered for identification with a label capable of withstanding field conditions and painted in a highly visible color.

(5) Protrude above the monitoring well casing.

(6) Have a locked cap.

(7) Be made of steel or other material of equivalent strength.

§ 277.284. Sampling and analysis.

A person or municipality operating a construction/demolition waste landfill shall conduct sampling and analysis from each monitoring point for the following parameters at the following frequencies:

(1) Quarterly, for chloride, sulfate, chemical oxygen demand, pH, specific conductance, total organic carbon, total organic halogen, iron and sodium, and, if required by the Department, for other constituents found in the waste received at the facility.

(2) Quarterly, for groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on United States Geological Survey datum.

§ 277.286. Groundwater assessment plan.

(a) *Requirement.* A person or municipality operating a construction/demolition waste landfill shall prepare and submit to the Department a groundwater assessment plan within 60 days after one of the following occurs:

(1) Data obtained from monitoring by the Department or the operator indicates groundwater degradation at a monitoring point.

(2) Laboratory analysis of one or more public or private water supplies shows the presence of degradation that could reasonably be attributed to the facility.

(b) *Exceptions.* The operator is not required to conduct an assessment under this section if one of the following applies:

(1) Within 10 working days after receipt of sample results showing groundwater degradation the operator resamples the affected wells and analysis from resampling shows to the Department's satisfaction that groundwater degradation has not occurred.

(2) Within 20 working days after receipt of sample results indicating groundwater degradation, the operator demonstrates that the degradation was caused entirely by earthmoving and other activities related to facility construction, or by seasonal variations.

(c) The groundwater assessment plan shall specify the manner in which the operator will determine the existence, quality, quantity, aerial extent and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. A groundwater assessment plan shall be prepared by an expert in the field of hydrogeology. The plan shall contain, at a minimum, the following information:

(1) The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers and other assessment structures or devices to be used. If the operator establishes compliance points as part of the assessment, the points shall be wells constructed in accordance with §§ 277.282 and 277.283 (relating to number, location and depth of monitoring points; and standards for wells and casing of wells).

(2) Sampling and analytical methods for the parameters to be evaluated.

(3) Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the concentration, rate and extent of groundwater degradation from the facility.

(4) An implementation schedule.

(5) Identification of the abatement standard that will be met.

(d) The groundwater assessment plan shall be implemented upon approval by the Department under the approved implementation schedule, and shall be completed in a reasonable time not to exceed 6 months unless otherwise approved by the Department. If the Department determines that the proposed plan is inadequate, it may modify the plan and approve the plan as modified. The operator shall notify, in writing, each owner of a private or public water supply located within 1/2-mile downgradient of the disposal area that an assessment has been initiated.

(e) Within 45 days after the completion of the groundwater assessment plan, the operator shall submit a report containing the new data collected, analysis of the data and recommendations on the necessity for abatement.

(f) If the Department determines after review of the groundwater assessment report that implementation of an abatement plan is not required by § 277.287 (relating to abatement plan), the operator shall submit a permit modification application under § 271.222 (relating to permit modification) for necessary changes to the groundwater monitoring plan. The operator shall implement the modifications within 30 days of the Department's approval.

(g) This section does not prevent the Department from requiring, or the operator from conducting, groundwater abatement or water supply replacement concurrently with, or prior to, implementation of the assessment.

§ 277.287. Abatement plan.

(a) The operator of a construction/demolition waste landfill shall prepare and submit to the Department an abatement plan whenever one of the following occurs:

(1) The groundwater assessment plan prepared and implemented under § 277.286 (relating to groundwater assessment plan) shows the presence of groundwater degradation at one or more monitoring wells and the analysis under § 277.286(c) indicates that an abatement standard under subsection (d) will not be met.

(2) Monitoring by the Department or operator shows the presence of an abatement standard exceedance from one or more compliance points as indicated in subsection (d), even if a groundwater assessment plan has not been completed. The operator is not required to implement an abatement plan under this paragraph if the following are met:

(i) Within 10 days after receipt of sample results showing an exceedance of an abatement standard, at a point of compliance described in subsection (d), the operator resamples the affected wells.

(ii) Analysis from resampling shows to the Department's satisfaction that an exceedance of an abatement standard has not occurred.

(b) An abatement plan shall be prepared by an expert hydrogeologist and submitted to the Department. The plan shall contain the following information:

(1) The specific methods or techniques to be used to abate groundwater pollution from the facility.

(2) The specific methods or techniques to be used to prevent further groundwater pollution from the facility.

(c) The abatement plan shall be completed and submitted to the Department for approval within 90 days of the time the obligation arises under this section unless the date is otherwise modified, in writing, by the Department.

(d) If abatement is required in accordance with subsection (a), the operator shall demonstrate compliance with one of the following abatement standards at and beyond 150 meters of the perimeter of the permitted disposal area or at and beyond the property boundary, whichever is closer:

(1) For constituents for which an MCL has been promulgated under the Federal Safe Drinking Water Act or the Pennsylvania Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-18; and 35 P.S. §§ 721.1—721.17), the MCL for that constituent.

(2) For constituents for which MCLs have not been promulgated, the background standard for the constituent.

(3) For constituents for which the background standard is higher than the MCL or risk-based standard identified under paragraph (4), the background standard.

(4) For constituents for which no MCLs have been established, the risk-based standard if the following conditions are met:

(i) The risk assessment used to establish the standard assumes that human receptors exist at the property boundary.

(ii) The level is derived in a manner consistent with Department guidelines for assessing the health risks of environmental pollutants.

(iii) The level is based on scientifically valid studies conducted in accordance with good laboratory practice standards (40 CFR Part 792 (relating to good laboratory practice standards)) promulgated under the Toxic Substances Control Act (15 U.S.C.A. §§ 2601—2692) or other scientifically valid studies approved by the Department.

(iv) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level of 1.0×10^{-5} at the property boundary.

(v) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subparagraph, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(e) Within 60 days of approval by the Department, the operator shall commence implementation of the plan, under the approved implementation schedule. If the Department determines that the proposed plan is inadequate, it may modify the plan and approve the plan as modified.

(f) The abatement plan shall be continued until the Department states in writing, based on monitoring by the Department and the operator, that groundwater pollution from the facility has been permanently abated.

MINERALS AND GAS

§ 277.291. Mineral resources.

(a) The operator shall isolate coal seams, coal outcrops and coal refuse from waste deposits in a manner that prevents the combustion of the waste and that prevents damage to the liner system.

(b) Mine openings within the site shall be sealed in a manner approved by the Department.

(c) The operator shall implement a plan for controlling potential for damage from subsidence that was submitted and approved under § 277.120 (relating to mineral deposits information).

§ 277.292. Gas control and monitoring.

If the waste disposed at the facility generates or is likely to generate gas, the operator shall establish and implement a gas control and monitoring program approved under § 277.171 (relating to gas monitoring and recovery plan).

EMERGENCY PROCEDURES

§ 277.301. Hazard prevention.

Construction/demolition waste landfills shall be designed, constructed, maintained and operated to prevent and minimize the potential for fire, explosion or release of solid waste constituents to the air, water or soil of this Commonwealth that could threaten public health or safety, public welfare or the environment.

§ 277.302. Emergency equipment.

(a) Except as provided in subsection (b), the operator shall have available in proper working condition, the following equipment at the immediate operating area of the facility:

(1) An internal communications or alarm system capable of providing immediate emergency instruction by voice or signal to facility personnel.

(2) A communications system capable of summoning emergency assistance from local police, fire departments, emergency medical services and from State and local emergency response agencies.

(3) Portable fire extinguishers, fire control equipment, spill control equipment and decontamination equipment. For fire control equipment requiring water, the facility shall have a water supply of adequate quantity and pressure to supply the equipment.

(4) Portable gas explosimeters and gas monitoring equipment.

(b) The Department may waive or modify one or more of the requirements of subsection (a) in the permit if the operator demonstrates to the Department's satisfaction in the permit application that the requirements are not necessary to protect public health and safety, public welfare and the environment.

(c) Equipment and material required by this section shall be tested and maintained so that it is operable in time of emergency.

(d) Adequate space shall be maintained to allow the unobstructed movement of emergency personnel and equipment to operating areas of the facility.

§ 277.303. Implementation of contingency plan.

(a) The operator of the facility shall immediately implement the applicable provisions of the approved contingency plan whenever there is an emergency. For purposes of this section, the term "emergency" includes a fire or spill or other event that threatens public health and safety, public welfare or the environment and personal injury.

(b) During an emergency, the operator shall:

(1) Assess actual or potential hazards to public health and safety, public welfare and the environment that are occurring or may occur.

(2) Ensure that fires, spills or other hazards do not occur, reoccur or spread to other solid waste at the facility.

(3) Immediately telephone the Department and county emergency management agency, and report the following information:

(i) The name of the person reporting the incident and telephone number where that person can be reached.

(ii) The name, address and permit number of the facility.

(iii) The date, time and location of the emergency.

(iv) A brief description of the nature of the emergency, the type and quantity of the solid waste involved and what dangers to public health and safety, public welfare and the environment exist or may occur.

(v) The nature of injuries.

(vi) The parts of the contingency plan being implemented to alleviate the emergency.

(c) After an emergency, the operator of the facility shall do the following:

(1) Clean up the area affected by the emergency and treat, store or dispose of recovered solid waste, contaminated soil, contaminated water or other material in a manner approved by the Department.

(2) Prevent disposal, processing, storage or treatment of solid waste in the area affected by the emergency until the operator has cleaned up the area, and the Department has inspected and approved the resumption of operation after the cleanup.

RECORDKEEPING AND REPORTING

§ 277.311. Daily operational records.

(a) The operator of a facility shall make and maintain an operational record for each day that construction/demolition waste is received, processed or disposed, and for each day that construction, monitoring or postclosure activity occurs.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside of this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The particular grid location of the area currently being used for disposal of solid waste.

(5) A description of waste handling problems or emergency disposal activities.

(6) A record of deviations from the approved design or operational plans.

(7) A record of activities for which entries are needed in order to comply with the annual operation report required in § 277.312 (relating to annual operation report).

(8) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(9) A record of the rejected waste loads and the reasons for rejecting the loads.

(10) A record of each incident in which radioactive material is detected in waste loads. The record shall include:

(i) The date, time and location of the occurrence.

(ii) A brief narrative description of the occurrence.

(iii) Specific information on the origin of the material, if known.

(iv) A description of the radioactive material involved, if known.

(v) The name, address and telephone numbers of the supplier or handler of the radioactive material and the name of the driver.

(vi) The final disposition of the material.

(11) A record of each vehicle, other than a combination, that exceeds 73,280 pounds gross weight and of each combination that exceeds 80,000 pounds gross weight.

(i) The record shall include:

(A) The gross weight of the vehicle when weighed at the facility.

(B) The registration plate number and home or base state registration of the vehicle.

(C) The name, business address and telephone number of the owner of the vehicle.

(D) The date and time when the vehicle was weighed at the facility.

(E) The date that the weight scale was last tested in accordance with 3 Pa.C.S. Chapter 41 (relating to the Consolidated Weights and Measures Act).

(ii) For purposes of this paragraph, the following words and terms have the following meanings unless the content clearly indicates otherwise:

Combination—Two or more vehicles physically interconnected in tandem. An example of a combination is a truck tractor attached to a semi-trailer.

Gross weight—The combined weight of a vehicle or combination of vehicles and its load, excluding the driver's weight.

Registration—The authority for a vehicle to operate on a highway as evidenced by the issuance of an identifying card and plate or plates.

(c) The operator shall maintain accurate operational records sufficient to determine whether construction/demolition waste is being stored under Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

§ 277.312. Annual operation report.

(a) An operator shall submit to the Department an annual operation report on or before June 30 of each year.

(b) The annual operation report, which shall be submitted on a form supplied by the Department, shall include the following:

(1) A topographic survey map of the same scale, contour interval and grid system as the original site plans showing the following:

(i) Contours at the beginning and the end of the year.

(ii) The completed areas of the site as well as areas partially filled but not active during the previous year.

(2) A description of capacity used in the previous year and remaining permitted capacity.

(3) A description of the acreage used for disposal, the acreage seeded, the acreage that has been vegetated, the acreage where vegetation is permanently established and a narrative of the operator's progress in implementing the closure plan.

(4) A current certificate of insurance as specified in § 271.374(a) (relating to proof of insurance coverage), evidencing continuous coverage for public liability insurance as required by § 271.371 (relating to insurance requirement).

(5) Changes in the previous year concerning the information required by §§ 271.124 and 271.125 (relating to identification of interests; and compliance information). The report shall state if no changes have occurred.

(6) A change in the ownership of the land upon which the facility is located or a change in a lease agreement for the use of the land that may affect or alter the operator's rights upon the lands.

(7) A written update of the total bond liability for the facility under § 271.331 (relating to bond and trust amount determination). If additional bond is determined to be necessary, it shall be submitted to the Department within 90 days after the annual report is due.

(8) Certification that the operator has received all analyses required by § 287.54 (relating to chemical analysis of waste) for each type of residual waste or special handling waste received at the facility during the calendar year.

(9) A record of detected radioactive materials.

(c) The annual operation report shall be accompanied by a nonrefundable annual permit administration fee of \$2,800 in the form of a check payable to the "Commonwealth of Pennsylvania."

(d) The report shall include an evaluation of whether the monitoring plan implemented under this subchapter needs to be revised to comply with § 277.282 (relating to number, location and depth of monitoring points) because of changes in groundwater elevation or other reasons. If this evaluation determines that changes in the approved groundwater monitoring plan are necessary, the operator shall immediately notify the Department and submit an application for permit modification under § 271.222 (relating to permit modification) for necessary changes in the monitoring plan.

CLOSURE PROVISIONS

§ 277.322. Closure.

(a) The operator shall implement the closure plan approved by the Department under § 277.192 (relating to closure plan).

(b) At least 180 days before implementation of a closure plan the operator shall review its approved closure plan to determine whether the plan requires modification, and shall submit proposed changes to the Department for approval under § 271.222 (relating to permit modification).

(c) If groundwater degradation exists at closure or occurs after closure, a person shall meet one of the following:

(1) Continue to implement an approved abatement plan.

(2) Submit an application for a closure plan modification in accordance with the procedures for a major permit modification. The operator shall select one or more remediation standards that will be met in accordance with the final closure certification requirements in § 271.342 (relating to final closure certification).

(d) An application for a closure plan modification shall include the following:

(1) Technical information and supporting documentation identifying the remediation activities that will be conducted to meet and maintain the remediation standards.

(2) If a remedy relies on access to or use of properties owned by third parties, for remediation or monitoring, documentation of cooperation or agreement.

(e) After closure, the Department may modify, in accordance with § 271.144 (relating to public notice and public hearings for permit modifications), the frequency of monitoring for a parameter for which quarterly monitoring is required under § 277.284 (relating to sampling and analysis) to a semiannual frequency if the operator demonstrates the following:

(1) The parameter has not caused or contributed to groundwater degradation.

(2) Based upon the characteristics of the waste at the facility and the performance of the liner system, the

parameter is unlikely to cause or contribute to groundwater degradation in the future.

(f) The Department may modify the frequency of monitoring for a parameter for which semiannual monitoring was approved under subsection (e) to an annual basis if the results of semiannual monitoring continue to demonstrate the following:

(1) The parameter has not caused or contributed to groundwater degradation.

(2) Based upon the characteristics of the waste at the facility and the performance of the liner system, the parameter is unlikely to cause or contribute to groundwater degradation in the future.

(g) The Department may reinstate the requirement of quarterly monitoring for any parameter monitored under subsection (e) or (f) if the Department has reason to believe that the parameter may cause or contribute to groundwater degradation.

CHAPTER 279. TRANSFER FACILITIES

Subchapter A. General

§ 279.1. Scope.

(a) This chapter sets forth application and operating requirements for a person or municipality that operates a transfer facility. The requirements in this chapter are in addition to the applicable requirements in Chapter 271 (relating to municipal waste management—general provisions).

(b) The Department may waive or modify a requirement of this chapter for permitted transfer facilities at which no actual loading, unloading or transferring of municipal waste occurs, if the absence of loading, unloading or transferring activity renders the requirement unnecessary.

Subchapter B. APPLICATION REQUIREMENTS FOR TRANSFER FACILITIES

GENERAL

§ 279.101. General requirements.

(a) An application to operate a transfer facility shall:

(1) Comply with the requirements of this subchapter.

(2) Comply with the applicable requirements of Chapter 271 (relating to municipal waste management—general provisions).

(b) Maps, plans and cross sections submitted to comply with this subchapter shall be on a scale in which 1 inch equals no more than 50 feet with 2-foot maximum contour intervals unless otherwise approved by the Department.

§ 279.102. Operating plan.

(a) An application to operate a transfer facility shall contain a narrative description of the general operating plan for the proposed facility, including the origin, composition and weight or volume of solid waste that is proposed to be received at the facility, the process to be used at the facility, the daily operational methodology of the proposed process, the loading rate, the proposed capacity of the facility and the expected life of the facility.

(b) An application shall contain a plan for an alternative waste handling or disposal system during periods when the proposed facility is not in operation, including procedures to be followed in case of equipment breakdown. Procedures may include the use of standby equipment, extension of operating hours and contractual agreements for diversion of municipal waste to other facilities.

(c) An application shall contain a plan for training equipment operators and other personnel concerning the

operation and approved design of the facility, including safety measures to prevent injuries.

(d) An application shall contain a plan for assuring that solid waste received at the facility is consistent with § 279.201 (relating to basic limitations).

(e) An application shall contain the proposed operating hours of the proposed facility.

(f) An application shall contain a narrative describing the procedures for inspection and monitoring of incoming waste.

§ 279.103. Maps and related information.

(a) An application shall contain a topographic map of the proposed permit area and adjacent area, including necessary narrative descriptions, which shows the following:

(1) The boundaries and names of present owners of record of land, both surface and subsurface, and including easements, rights-of-way and other property interests, for the proposed permit area and adjacent area; the boundaries of the land within the proposed permit area; and a description of title, deed or usage restrictions affecting the proposed permit area.

(2) The boundaries of the land to be affected over the estimated total life of the proposed facility.

(3) The location and name of surface water bodies, such as springs, streams, lakes, ponds, wetlands, constructed or natural drains and irrigation ditches that are located on the proposed permit area and adjacent area.

(4) The location and name of public and private water sources that are located on or within 1/4 mile of the proposed facility. If more than 50 wells are located within the 1/4-mile radius, the applicant may identify only the closest wells in each direction and generally describe the location and number of wells within the 1/4-mile radius.

(5) The location of rights-of-way for high-tension power lines, pipelines, railroads and public and private roads within 300 feet of the proposed facility.

(6) The location of buildings currently in use by a person within 300 feet of the proposed facility.

(7) The anticipated location of water quality monitoring points if monitoring is required by the Department.

(8) The boundaries of land within the proposed permit area or adjacent area identified in § 279.202 (relating to areas where transfer facilities are prohibited).

(9) The municipalities in which the permit area is proposed to be located.

(10) The location of the 100-year floodplain boundaries.

(11) The location of access roads to and within the proposed permit area, including slopes, grades and lengths of the roads.

(12) The location of barriers, fences and similar facilities required by § 279.212 (relating to access control).

(13) The water diversion, collection, conveyance, erosion and sedimentation control, treatment, storage and discharge facilities to be used.

(14) The solid waste storage or loading/unloading areas.

(15) The areas of land for which a bond will be posted under Chapter 271, Subchapter D (relating to financial assurances requirements).

(16) The location and use of buildings and related facilities which will be used in the operation, including their horizontal and vertical dimensions.

(17) The location of scales and weigh stations to be used in the operation.

(18) A designated area for vehicles for use in the event of the detection of waste containing radioactive material. The designated area shall, by location or shielding, protect the environment, facility staff and public from radiation originating in the vehicle. The Department's "Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document Number 250-3100-001, describes various factors to consider in determining an appropriate designated area.

(b) The applicant shall also show the location of a permanent benchmark for horizontal and vertical control.

§ 279.104. Plan for access roads.

The application shall contain designs, cross sections and specifications for access roads, including load limits, under § 279.213 (relating to access roads).

§ 279.105. Soil erosion and sedimentation control plan.

(a) The applicant shall submit a plan to manage surface water and control erosion during the phases of construction and operation on the permit area. The plan shall be based on the requirements of Chapter 102 (relating to erosion and sediment control), § 279.232 (relating to soil erosion and sedimentation control) and other applicable State and Federal requirements. Calculations indicating water quantities shall be based on the 24-hour precipitation event in inches to be expected once in 25 years.

(b) The plan shall include fully dimensioned diversion ditches, indicating length, gradient and cross section for configuration by reach and capacities for ditch volume by reach. Calculations which are necessary to support design and siting shall be included in the plan.

§ 279.106. Soil and groundwater monitoring plan.

(a) If required by the Department, the applicant shall submit a groundwater monitoring plan to detect groundwater degradation from the facility.

(b) If required by the Department, the applicant shall submit a soil monitoring plan, capable of detecting soil contamination from the facility.

§ 279.109. Contingency plan.

An application shall contain a contingency plan consistent with §§ 279.241—279.243 (relating to emergency procedures). The plan shall include a Preparedness, Prevention and Contingency (PPC) Plan that is consistent with the Department's most recent guidelines for the development and implementation of PPC plans.

§ 279.110. Radiation protection action plan.

(a) An application shall contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting.

(b) The action plan shall be prepared in accordance with the Department's "Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document Number 250-3100-001, or in a manner at least as protective of the environment, facility

staff and public health and safety and which meets all statutory and regulatory requirements.

(c) The action plan shall be incorporated into the facility's approved waste analysis plan, under § 271.613 (relating to waste analysis plan).

§ 279.111. Daily volume.

The application shall contain a proposed maximum daily volume for the facility, and a detailed justification for the volume, based on §§ 271.126 and 271.127 (relating to requirement for environmental assessment; and environmental assessment).

RECYCLING

§ 279.121. Recycling plan.

An application shall contain a plan for salvaging and recycling waste materials received at the facility for which recycling is cost effective, including proposed salvage areas, salvaging methods and anticipated markets for salvaged materials, under § 279.271 (relating to salvaging of materials).

Subchapter C. OPERATING REQUIREMENTS FOR TRANSFER FACILITIES GENERAL PROVISIONS

§ 279.201. Basic limitations.

(a) A person or municipality may not own or operate a transfer facility unless the Department has first issued a permit to the person or municipality for the facility under this chapter.

(b) A person or municipality that operates a transfer station facility shall comply with the following:

(1) The operating requirements of the act, this subchapter and the applicable requirements of Chapter 271 (relating to municipal waste management—general provisions).

(2) The plans and specifications in the permit, the terms and conditions of the permit, the environmental protection acts, this title and orders issued by the Department.

(c) A person or municipality that operates a transfer facility may not allow residual waste or special handling waste to be received or handled at the facility unless the Department has specifically approved handling that waste in the permit.

(d) A person or municipality that operates a transfer facility may not:

(1) Mix solid waste with, or store solid waste in such close proximity to other solid waste to create a risk of fire or explosion, or a risk to the accumulation of poisonous or otherwise harmful vapors or gases.

(2) Allow explosive waste to be stored or processed at the facility.

(e) Hazardous waste subject to Article VII (relating to hazardous waste management) may not be disposed, processed or stored at transfer facilities.

(f) A person or municipality may not allow solid waste to be received, disposed or otherwise managed at the facility if the transportation to, or processing or management at, the facility would violate applicable laws in effect in the county or state in which the waste was generated, or state or local solid waste management plans in effect where the waste was generated.

(g) The Department may waive or modify a requirement of this chapter for permitted transfer facilities at

which no actual loading, unloading or transferring of municipal waste occurs, if the absence of loading, unloading and transferring activity renders the requirement unnecessary.

(h) The approved mitigation measures identified in the permit application shall be completed before a facility may accept waste unless a later date is authorized in writing by the Department for technical reasons.

(i) The following radioactive material controlled under specific or general license or order authorized by any Federal, State or other government agency may not be processed at the facility, unless specifically exempted from disposal restrictions by an applicable State or Federal statute or regulation:

- (1) Naturally occurring and accelerator produced radioactive material.
- (2) Byproduct material.
- (3) Source material.
- (4) Special nuclear material.
- (5) Transuranic radioactive material.
- (6) Low-level radioactive waste.

(j) The following radioactive material may not be processed at the facility, unless approved in writing by the Department and the processing does not endanger the environment, facility staff or public health and safety:

(1) Short lived radioactive material from a patient having undergone a medical procedure.

(2) TENORM.

(3) Consumer products containing radioactive material.

(k) The limitations in subsections (i) and (j) do not apply to radioactive material as found in the undisturbed natural environment of the Commonwealth.

§ 279.202. Areas where transfer facilities are prohibited.

(a) Except for areas that were permitted prior to April 9, 1988, a transfer facility may not be operated as follows:

(1) *Floodplain.* In the 100-year floodplain of waters in this Commonwealth, unless the Department approves in the permit a method of protecting the facility from a 100-year flood consistent with the Flood Plain Management Act (32 P. S. §§ 679.101—679.601) and the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

(2) *Wetland.*

(i) In or within 300 feet of an exceptional value wetland, as defined in § 105.17 (relating to wetlands).

(ii) For a transfer facility permitted on or after December 23, 2000, other than an expansion of a transfer facility that was permitted prior to December 23, 2000, in or within 100 feet of a wetland other than an exceptional value wetland, unless storage and processing will not occur within that distance or storage and processing take place in an enclosed facility and one of the following applies:

(A) If the operation is in or along the wetland, the operator has received a permit from the Department under Chapter 105 (relating to dam safety and waterway management).

(B) If the operation is not in or along the wetland, no adverse hydrologic or water quality impacts will result.

(3) *Occupied dwelling.* Within 300 feet measured horizontally from an occupied dwelling, unless the owner has provided a written waiver consenting to the facility being closer than 300 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(4) *Perennial stream.* Within 100 feet of a perennial stream, unless one of the following applies:

(i) Storage and processing will not occur within 100 feet of a perennial stream and no adverse hydrologic or water quality impacts will result.

(ii) Storage and processing take place in an enclosed facility and no adverse impacts to the perennial stream will result.

(iii) The facility transfers containerized waste to barges at the transfer facility location.

(5) *Property line.* Within 50 feet of a property line unless the operator demonstrates one of the following:

(i) That actual processing of waste is not occurring within 50 feet of a property line.

(ii) That storage and processing occurring within 50 feet of a property line take place in an enclosed facility.

(iii) That the owner of the adjacent property has provided a written waiver consenting to the facility being closer than 50 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(6) *School, park or playground.*

(i) For a municipal waste transfer facility permit issued on or after December 23, 2000, except an expansion of a municipal waste transfer facility permitted prior to December 23, 2000, within 300 yards of the following:

(A) A building which is owned by a school district or school and used for instructional purposes.

(B) A park.

(C) A playground.

(ii) The current property owner of a school building, park or playground may waive the 300-yard prohibition by signing a written waiver. Upon receipt of the waiver, the Department will waive the 300-yard prohibition and will not use the prohibition as the basis for the denial of a new permit.

(b) Except as provided in subsection (c), this section does not apply to a feature that may come into existence after the date of the first newspaper notice under § 271.141 (relating to public notice by applicant).

(c) This section does not apply to a feature that may come into existence after the date of the first newspaper notice under this subsection if the following apply:

(1) The person or municipality publishes a notice of intent to file an application for a transfer facility permit. The notice, which is separate from the newspaper notice required by § 271.141 shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the facility is proposed to be located. The notice shall include a brief description of the location and proposed operation of the facility.

(2) The person or municipality files an administratively complete application under § 271.202 (relating to receipt of application and completeness review) with the Department within 1 year from the date of the first newspaper notice under this subsection.

DAILY OPERATIONS

§ 279.211. Signs and markers.

(a) A person or municipality that operates a transfer facility shall identify the facility and the recycling drop-off center required under § 279.272 (relating to recycled materials collection center) for the duration of operations by posting and maintaining a sign which will be clearly visible and can be easily seen and read at the junction of each access road and public road unless otherwise approved by the Department. The sign shall be constructed of a durable, weather-resistant material. The sign shall show the name, business address and telephone number of the person or municipality that operates the facility, the operating hours of the facility and the number of the current permit authorizing operations at the facility.

(b) Permit area markers and the benchmark for horizontal and vertical control shall be:

(1) Posted and maintained for the duration of the operation to which they pertain.

(2) Clearly visible, readable and uniform throughout the operation.

(3) Permanently fixed and made of a durable material.

§ 279.212. Access control.

(a) A gate or other barrier shall be maintained at potential vehicular access points to block unauthorized access to the site when an attendant is not on duty.

(b) The operator shall maintain a fence or other suitable barrier around the site sufficient to prevent unauthorized access.

(c) Access to the site shall be limited to times when an attendant is on duty.

§ 279.213. Access roads.

(a) An access road shall be designed, constructed and maintained to prevent erosion to the maximum extent possible and to prevent contributions of sediment to streams or runoff outside the site.

(b) A crossing of a perennial or intermittent stream or a wetland shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachments or water obstructions shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) An access road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 25-year, 24-hour precipitation event. The drainage system shall also comply with Chapter 102 (relating to erosion control).

(d) An access road shall be paved or surfaced with asphalt, gravel, cinders or other equivalent material approved by the Department in the permit. An access road shall be capable of withstanding the load limits projected by the applicant under § 279.104 (relating to plan for access roads). The maximum sustained grade of an access road may not exceed 12%.

(e) An access road negotiable by loaded collection vehicles shall be provided from the entrance gate of the area to unloading areas, treatment facilities or impoundments.

(f) A road shall be constructed on a base that is capable of withstanding anticipated loads.

(g) Disturbed areas adjacent to a road shall be vegetated or otherwise stabilized to prevent erosion.

(h) An access road shall be maintained to control dust and to prevent and control the tracking of mud on and off the site.

§ 279.214. Measurement and inspection of waste.

(a) Solid waste delivered to the facility shall be accurately weighed or otherwise accurately measured prior to unloading.

(b) The operator of a transfer facility shall inspect and monitor incoming waste to ensure that the receipt of waste is consistent with this article.

(c) An operator of a transfer facility that has received, is receiving or will receive 30,000 or more cubic yards of solid waste in a calendar year shall weigh solid waste when it is received. The scale used to weigh solid waste shall conform to 3 Pa.C.S. Chapter 41 (relating to the Consolidated Weights and Measures Act) and 70 Pa. Code Part I (relating to general provisions). The operator of the scale shall be a licensed public weighmaster under 3 Pa.C.S. Chapter 41 and 70 Pa. Code Part I.

§ 279.215. Operations and equipment.

(a) Loading, unloading, storage, compaction and related activities shall be conducted in an enclosed building, unless otherwise approved by the Department in the permit.

(b) The operator shall maintain on the site equipment necessary for operation of the facility under the permit. The equipment shall be maintained in an operable condition.

(c) If a breakdown of the operator's equipment occurs, the operator shall utilize standby equipment as necessary to comply with the act, the environmental protection acts, this subchapter and its permit conditions.

(d) Equipment shall be operated and maintained to prevent solid waste from being unintentionally removed from the storage area.

(e) Equipment shall be cleaned at frequencies specified in the permit based on scheduled or emergency maintenance periods.

§ 279.216. Unloading area.

(a) The approach and unloading area shall be adequate in size and design to facilitate the rapid unloading of solid waste from the collection vehicles and the unobstructed maneuvering of the vehicles and other equipment.

(b) The loading areas and unloading areas shall be constructed of impervious material which is capable of being cleaned by high pressure water spray and shall be equipped with drains or sumps connected to a sanitary sewer system or treatment facility to facilitate the removal of water. Drains or treatment systems may be connected to a sanitary sewer system if a waste characterization is submitted to the sewage treatment plant operator and the operator finds that the treatment plant can fully treat the waste stream. Leachate may be collected in holding tanks prior to its transport to the sewage treatment plant.

(c) If the facility has an unloading pit, the facility shall have in place truck wheel curbs and tie downs that are sufficient to prevent trucks from backing into the pit or falling into the pit while unloading.

(d) An attendant or clearly marked signs shall direct vehicles to the unloading area.

(e) The operator shall ensure that collection vehicles unload waste promptly in unloading areas.

(f) Solid waste shall be confined to the unloading area and the approved storage areas.

§ 279.217. Cleaning and maintenance.

(a) Areas within the building shall be kept clean.

(b) The operator may not allow putrescible waste to remain at the transfer facility at the end of the day or for more than 24 hours, except that putrescible waste may remain at a transfer facility for any period of time up to 72 hours over a weekend of 3-day weekend if the transfer facility permit so provides.

(c) Plumbing shall be properly maintained, and the floors shall be well drained.

(d) Macerators, hammer mills and grinders shall be cleanable and shall be equipped with drains that connect to a sanitary sewer system or treatment facility. Drains or treatment systems may be connected to a sanitary sewer system if a waste characterization is submitted to the sewage treatment plant operator and the operator finds that the treatment plant can fully treat the waste stream.

(e) Provision shall be made for routine maintenance of the facility.

§ 279.218. Air resources protection.

(a) The operator shall implement fugitive air contaminant control measures, and shall otherwise prevent and control air pollution in accordance with the Air Pollution Control Act (35 P. S. §§ 4001—4014), Article III (relating to air resources) and § 279.219 (relating to nuisance control).

(b) A person or municipality may not cause or allow open burning at the facility.

§ 279.219. Nuisance minimization and control.

(a) The operator shall control and minimize the attraction, harborage or breeding of vectors.

(b) The operator shall control and minimize conditions not otherwise prohibited by this subchapter that are harmful to the environment or public health, or which create safety hazards, odors, dust, noise, unsightliness and other public nuisances.

§ 279.221. Litter.

(a) The operator may not allow litter to be blown or otherwise deposited offsite.

(b) Fences or other barriers sufficient to control blowing litter shall be located in the area immediately downwind from the unloading area, unless operations are conducted within an enclosed building or the solid waste being transferred cannot create blowing litter.

(c) Litter shall be collected at least weekly from fences, roadways, tree line barriers and other barriers and disposed or stored in accordance with the act and regulations thereunder, unless a greater frequency is set forth in the permit.

§ 279.222. Radiation monitoring and response.

(a) An operator shall implement the action plan approved under § 279.110 (relating to radiation protection action plan).

(b) An operator shall monitor incoming waste in accordance with the Department's "Guidance Document on

Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document Number 250-3100-001 or in a manner at least as protective of the environment, facility staff and public health and safety. Monitoring shall meet the requirements of this section and the facility's approved radiation protection action plan.

(c) Radiation detector elements shall be as close as practical to the waste load and in an appropriate geometry to monitor the waste. The radiation monitoring system shall be set to alarm at a level no higher than 10 microrentgen per hour ($\mu\text{R/hr}$) above the average background at the facility when any of the radiation detector elements is exposed to a cesium-137 gamma radiation field. Radiation detector elements shall be shielded to maintain the average background below 10 $\mu\text{R/hr}$. If capable of energy discrimination, the radiation monitoring system shall be set to detect gamma rays of a 50 kiloelectron volt (keV) energy and higher.

(d) An operator shall have portable radiation monitors capable of determining the radiation dose rate and presence of contamination on a vehicle that has caused an alarm. Upon a confirmed exceedance of the alarm level in subsection (c), a radiological survey of the vehicle shall be performed.

(e) An operator shall notify the Department immediately and isolate the vehicle when radiation dose rates of 20 $\mu\text{Sv}^{\text{h}^{-1}}$ (2 $\text{mrem}^{\text{h}^{-1}}$) or greater are detected in the cab of a vehicle, 500 $\mu\text{Sv}^{\text{h}^{-1}}$ (50 $\text{mrem}^{\text{h}^{-1}}$) or greater are detected from any other surface, or contamination is detected on the outside of the vehicle.

(f) Monitoring equipment shall be calibrated at a frequency specified by the manufacturer, but not less than once a year.

(g) If radioactive material is detected, the vehicle containing the radioactive material may not leave the facility without written Department approval and an authorized United States Department of Transportation exemption form.

§ 279.223. Daily volume.

A person or municipality operating a transfer facility may not receive solid waste at the facility in excess of the maximum daily volume approved in the permit.

SOIL AND WATER PROTECTION

§ 279.231. General requirements.

(a) The operator may not cause or allow a point or nonpoint source discharge in violation of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) from or on the facility to surface waters of this Commonwealth.

(b) A transfer facility shall be operated to prevent and control water pollution. An operator shall operate and maintain necessary water pollution treatment facilities until water pollution from or on the facility has been permanently abated.

(c) The operator may not cause water pollution on or off the site.

(d) The operator may not cause contamination of soil on or off the site.

§ 279.232. Soil erosion and sedimentation control.

The operator shall manage surface water and control erosion and sedimentation to:

(1) Divert surface water away from the storage area with measures and structures necessary to handle surface water flows based on a 25-year, 24-hour precipitation

event, supported by written calculations and also comply with Chapter 102 (relating to erosion control).

(2) Meet the requirements of Chapters 102 and 105 (relating to erosion and sediment control; and dam safety and waterway management).

(3) Prevent erosion to the maximum extent possible, including where possible, using revegetation.

§ 279.233. Soil and groundwater monitoring.

(a) If required by the Department as part of the permit, the operator shall conduct soil or groundwater monitoring, or both. The monitoring shall be in accordance with §§ 273.282—273.288 as required by the Department, and the terms and conditions of the permit, and shall continue for the period specified in § 279.262 (relating to cessation of operations).

(b) For purposes of interfacing with §§ 273.282—273.288, the following terms apply:

(1) The term "disposal area" shall be substituted with "area where storage and processing occur."

(2) The term "municipal waste landfill" shall be substituted with "transfer facility."

(3) The term "disposed" shall be substituted with "stored or processed."

§ 279.234. Water supply replacement.

(a) A person or municipality operating a transfer facility which adversely affects a water supply by degradation, pollution or other means shall restore or replace the affected water supply with an alternate source that is of like quantity and quality to the original supply at no additional cost to the owner.

(b) A temporary water supply shall be provided as soon as practicable but not later than 48 hours after one of the following:

(1) Receipt of information showing that the operator is responsible for adversely affecting the water supply.

(2) Receipt of notice from the Department that the operator is responsible for adversely affecting the water supply.

(c) A permanent water supply shall be provided as soon as practicable but no later than 90 days after one of the following:

(1) Receipt of information showing that the operator is responsible for adversely affecting the water supply.

(2) Receipt of notice from the Department that the operator is responsible for adversely affecting the water supply.

(d) Permanent water supplies include development of a new well with a distribution system, interconnection with a public water supply, or extension of a private water supply, but do not include provision of bottled water or a water tank supplied by a bulk water hauling system, which are temporary water supplies.

EMERGENCY PROCEDURES

§ 279.242. Emergency equipment.

(a) Except as provided in subsection (b), a person or municipality operating a transfer facility shall have available in proper working condition the following equipment at the immediate operating area of the facility:

(1) An internal communications or alarm system capable of providing immediate emergency instruction by voice or signal to facility personnel.

(2) A communications system capable of summoning emergency assistance from local police, fire departments, emergency medical services and from State and local emergency response agencies.

(3) Portable fire extinguishers, fire control equipment, spill control equipment and decontamination equipment. For fire control equipment requiring water, the facility shall have a water supply of adequate quantity and pressure to supply the equipment.

(b) The Department may waive or modify the requirements in subsection (a) if the operator demonstrates to the Department's satisfaction that the requirements are not necessary to protect public health and safety, public welfare and the environment.

(c) Equipment and material required by this section shall be tested and maintained so that it is operable in time of emergency.

(d) Adequate space shall be maintained to allow the unobstructed movement of emergency personnel and equipment to operating areas of the facility.

§ 279.243. Implementation of contingency plan.

(a) The operator of a transfer facility shall immediately implement the applicable provisions of the approved contingency plan whenever there is an emergency. For the purposes of this section, the term "emergency" includes a fire, spill or other hazard that threatens public health and safety, public welfare or the environment and personal injury.

(b) During an emergency, the operator shall:

(1) Assess actual or potential hazards to public health and safety, public welfare and the environment that are occurring, or may occur.

(2) Ensure that fires, spills or other hazards do not occur, reoccur or spread to other solid waste at the facility.

(3) Immediately telephone the Department and county emergency management agency, and report the following information:

(i) The name of the person reporting the incident and telephone number where that person can be reached.

(ii) The name, address and permit number of the facility.

(iii) The date, time and location of the emergency.

(vi) The parts of the contingency plan being implemented to alleviate the emergency.

(c) After an emergency, the operator of the facility shall do the following:

(1) Clean up the area affected by the emergency and treat, store or dispose of recovered solid waste, contaminated soil, contaminated water or other material in a manner approved by the Department.

(2) Prevent processing or storage of solid waste in the area affected by the emergency until the operator has cleaned up the area, and the Department has approved the resumption of operation after the cleanup.

RECORDKEEPING AND REPORTING

§ 279.251. Daily operational records.

(a) A person or municipality that operates a transfer facility shall make and maintain an operational record for each day that municipal waste is received, processed or transported offsite.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside of this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The destination of the solid waste, including the facility name, the county and state in which it is located, and the type and weight or volume of waste transported.

(5) The type and weight or volume of materials which are recycled.

(6) A description of waste handling problems or emergency disposal activities.

(7) A record of deviations from the approved design or operational plans.

(8) A record of activities for which entries are needed to comply with the annual operation report required in § 279.252 (relating to annual operation report).

(9) A report of actions taken to correct violations of the act, the environmental protection acts and this title.

(10) A record of rejected waste loads and the reasons for rejecting the loads.

(11) A record of each incident in which radioactive material is detected in waste loads. The record shall include:

(i) The date, time and location of the occurrence.

(ii) A brief narrative description of the occurrence.

(iii) Specific information on the origin of the material, if known.

(iv) A description of the radioactive material involved, if known.

(v) The name, address and telephone numbers of the supplier or handler of the radioactive material and the name of the driver.

(vi) The final disposition of the material.

(c) The operator shall maintain accurate operational records sufficient to determine whether municipal waste is being stored in accordance with Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

§ 279.252. Annual operation report.

(a) A person or municipality that operates a transfer facility shall submit to the Department an annual operation report on or before June 30 of each year.

(b) The annual operating report, which shall be submitted on a form supplied by the Department, shall include the following:

(1) A current certificate of insurance as specified in § 271.374(a) (relating to proof of insurance coverage), evidencing continuous coverage for public liability insurance as required by § 271.371 (relating to insurance requirement).

(2) Changes in the previous year concerning the information required by §§ 271.124 and 271.125 (relating to

identification of interests; and compliance information). The report shall state if no changes have occurred.

(3) A change in the ownership of the land upon which the facility is located or a change in a lease agreement for the use of the land that may affect or alter the operator's rights upon the lands.

(4) A written update of the total bond liability for the facility under § 271.331 (relating to bond and trust amount determination). If additional bond is determined to be necessary, it shall be submitted to the Department within 90 days after the annual report is due.

(5) Certification that the operator has received the analysis or certification required by § 287.54 (relating to chemical analysis of waste) for each type of residual waste or special handling waste received at the facility, and that the residual waste or special handling waste that is received at the facility meets the conditions in the facility's permit.

(6) A record of detected radioactive materials.

(c) The annual operation report shall be accompanied by a nonrefundable annual permit administration fee of \$700 in the form of a check payable to the "Commonwealth of Pennsylvania."

CESSATION AND CLOSURE

§ 279.262. Cessation of operations.

(a) Upon cessation of processing operations at the facility, the operator shall immediately remove solid waste and structures or other materials which contain or are contaminated with solid waste, and shall provide for the processing or disposal of the waste or material in accordance with the act, the environmental protection acts and this title.

(b) An operator required under § 279.233 (relating to soil and groundwater monitoring) to conduct soil monitoring may discontinue soil monitoring upon cessation of processing operations with the Department's approval. In deciding whether to allow discontinuance of monitoring, the Department will consider the operational history of the facility, the likelihood that soil contamination will manifest itself in the future and other factors.

(c) An operator required under § 279.233 to conduct groundwater monitoring may discontinue groundwater monitoring after cessation of processing operations and cleanup only upon written approval by the Department. In deciding whether to allow discontinuance of monitoring, the Department will consider the operational history of the facility, the likelihood that groundwater contamination will manifest itself in the future, whether the remediation standards in § 271.342(b)(4) (relating to final closure certification) are met and maintained and other relevant factors.

CHAPTER 281. COMPOSTING FACILITIES

Subchapter B. APPLICATION REQUIREMENTS FOR GENERAL COMPOSTING FACILITIES

GENERAL PROVISIONS

§ 281.101. General requirements.

(a) An application to operate a general composting facility shall:

(1) Comply with this subchapter.

(2) Comply with the applicable requirements of Chapter 271 (relating to municipal waste management—general provisions).

(b) Maps, plans and cross sections submitted to comply with this subchapter shall be on a scale in which 1 inch equals no more than 50 feet with 2-foot maximum contour intervals, unless otherwise approved by the Department.

PLANS

§ 281.111. Operating plan.

An application to operate a general composting facility shall contain the following:

(1) A narrative description of the general operating plan for the proposed facility, including the origin, composition and weight or volume of solid waste that is proposed to be composted at the facility, the suitability of the waste for composting, the composting process to be used at the facility, the daily operational methodology of the proposed process, the proposed processing and storage capacity of the facility and the expected life of the facility.

(2) A plan for an alternative waste handling or disposal system during periods when the proposed facility is not in operation, including procedures to be followed in case of equipment breakdown. Procedures may include the use of standby equipment, extension of operating hours or contractual agreements for diversion of municipal waste to other facilities.

(3) A plan for sampling and analyzing the compost.

(4) A description of the anticipated quality of the compost.

(5) A plan for the anticipated recovery rate of compost from the process, and plans for the reuse, sale or marketing of the compost.

(6) A plan for managing compost should markets for the sale or reuse of compost become unavailable.

(7) A plan for the proposed location and method for disposal or processing of residue produced by operation of the facility.

(8) A plan for assuring that solid waste received at the facility is consistent with § 281.201 (relating to basic limitations).

(9) A plan for training equipment operators and other personnel concerning the operation and approved design of the facility.

(10) The proposed operating hours of the proposed facility.

(11) A narrative describing the procedures for inspection and monitoring of incoming waste.

§ 281.112. Maps and related information.

(a) An application shall contain a topographic map, including necessary narrative descriptions, which shows the following:

(1) The boundaries and names of present owners of record of land, both surface and subsurface, and including easements, rights-of-way and other property interests, for the proposed permit area and adjacent area; the boundaries of the land within the proposed permit area; and a description of title, deed or usage restrictions affecting the proposed permit area.

(2) The boundaries of land to be affected over the estimated total life of the proposed operation.

(3) The location and name of surface water bodies, such as springs, streams, lakes, ponds, wetlands, constructed or natural drains and irrigation ditches located on the proposed permit area and adjacent area.

(4) The location and name of public and private water sources that are located on the proposed permit area and adjacent area.

(5) The location of rights-of-way for high-tension power lines, pipelines, railroads and public and private roads within 300 feet of the proposed facility.

(6) The location of buildings currently in use within 300 feet of the proposed facility.

(7) The anticipated location of water quality monitoring points.

(8) The boundaries of land within the proposed permit area or adjacent area identified in § 281.202 (relating to areas where general composting facilities are prohibited).

(9) The location of underground mine shafts on the proposed permit area and adjacent areas.

(10) The municipalities in which the permit area is proposed to be located.

(11) The location of the 100-year floodplain boundaries in the permit area and adjacent area.

(12) The location of barriers, fences and similar structures required by § 281.213 (relating to access control).

(13) The water diversion, collection, conveyance, sedimentation and erosion control, treatment, storage and discharge facilities to be used.

(14) The composting pads, tipping areas, storage areas, windrows and loading/unloading areas.

(15) The areas of land for which a bond will be posted under Chapter 271, Subchapter D (relating to financial assurances requirements).

(16) The location, size and use of buildings and related facilities which will be used in the operation, including the horizontal and vertical dimensions.

(17) The location of scales and weigh stations to be used in the operation.

(18) The utilities to be installed at the facility.

(19) The location of access loads to the site, including slopes, grades and lengths of the roads.

(20) For a commercial composting facility that will receive sewage sludge or unseparated municipal waste, or both, a designated area for vehicles for use in the event of the detection of waste containing radioactive material. The designated area shall, by location or shielding, protect the environment, facility staff and public from radiation originating in the vehicle. The Department's "Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document Number 250-3100-001, describes various factors to consider in determining an appropriate designated area.

(b) The applicant shall also submit a grid coordinate system for the entire proposed permit area. The horizontal control system shall consist of a grid not to exceed 200-foot-square sections. A permanent benchmark for horizontal and vertical control shall be shown. The grid system shall be tied to the benchmark and the baseline.

§ 281.119. Radiation protection action plan.

(a) An application for a commercial composting facility that will receive sewage sludge or unseparated municipal waste, or both, shall contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting.

(b) The action plan shall be prepared in accordance with the Department's "Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document Number 250-3100-001, or in a manner at least as protective of the environment, facility staff and public health and safety and which meets all statutory and regulatory requirements.

(c) The action plan shall be incorporated into the facility's approved waste analysis plan under § 271.613 (relating to waste analysis plan).

COMPOSTING

§ 281.121. Composting pad and vessel design.

(a) An application shall contain plans and specifications for the design, construction and maintenance of composting pads and vessels that will be required for the proposed facility.

(b) The application shall also contain a plan for inspection of composting pads and vessels to ensure their integrity.

(c) Composting pad and vessel plans and designs shall be consistent with § 281.231 (relating to composting pad or vessel).

§ 281.123. Daily volume.

The application shall contain a proposed maximum daily volume for the facility, and a detailed justification for volume, under §§ 271.126 and 271.127 (relating to requirement for environmental assessment; and environmental assessment).

SOIL AND WATER

§ 281.132. Soil erosion and sedimentation control plan.

(a) The applicant shall submit a plan to manage surface water and control erosion during all phases of construction and operation at the facility. The plan shall be based on the requirements of Chapter 102 (relating to erosion control), § 281.252 (relating to soil erosion and sedimentation control) and other applicable State and Federal requirements. Calculations indicating water quantities shall be based on the 24-hour precipitation event in inches to be expected once in 25 years. More stringent design standards may be required by the Department based on the most recent edition of the United States Department of Agriculture Soil Conservation Services' *Engineering Field Manual for Conservation Practices*.

(b) The plan shall include fully dimensioned diversion ditches, indicating length, gradient and cross section for configuration by reach, and capacities for ditch volume by reach. Calculations which are necessary to support design and siting shall be included in the plan.

§ 281.134. Soil and groundwater monitoring plan.

(a) If required by the Department, the applicant shall submit a groundwater monitoring plan to detect groundwater degradation from the facility.

(b) If required by the Department, the applicant shall submit a soil monitoring plan capable of detecting the contamination from the facility.

**Subchapter C. OPERATING REQUIREMENTS FOR
GENERAL COMPOSTING FACILITIES**

GENERAL PROVISIONS

§ 281.201. Basic limitations.

(a) A person or municipality may not own or operate a general composting facility unless the Department has first issued a permit to the person or municipality for the facility under this chapter.

(b) A person or municipality that operates a general composting facility shall comply with the following:

(1) The operating requirements of the act, this subchapter and the applicable requirements of Chapter 271 (relating to municipal waste management—general provisions).

(2) The plans and specifications in the permit, the terms and conditions of the permit, the environmental protection acts, this title and orders issued by the Department.

(c) A person or municipality that operates a general composting facility may not allow residual waste or special handling waste to be handled at the facility unless the Department has specifically approved special measures for managing the waste as part of the permit.

(d) A person or municipality that operates a general composting facility may not:

(1) Mix solid waste with, or store solid waste in close proximity to, other solid waste to create a risk of fire or explosion, or a risk of the accumulation of poisonous or otherwise harmful vapors or gases.

(2) Allow explosive waste to be processed at the facility.

(e) Hazardous waste subject to Article VII (relating to hazardous waste management) may not be disposed, processed or stored where general composting facilities are operated.

(f) The approved mitigation measures identified in the permit application shall be completed before a facility may accept waste, unless a later date is authorized in writing by the Department for technical reasons.

(g) The following radioactive material controlled under specific or general license or order authorized by any Federal, State or other government agency may not be processed at the facility, unless specifically exempted from disposal restrictions by an applicable State or Federal statute or regulation:

(1) Naturally-occurring and accelerator-produced radioactive material.

(2) Byproduct material.

(3) Source material.

(4) Special nuclear material.

(5) Transuranic radioactive material.

(6) Low-level radioactive waste.

(h) The following radioactive material may not be processed at the facility, unless approved in writing by the Department and the processing does not endanger the environment, facility staff or public health and safety:

(1) Short-lived radioactive material from a patient having undergone a medical procedure.

(2) TENORM.

(3) Consumer products containing radioactive material.

(i) The limitations in subsections (g) and (h) do not apply to radioactive material as found in the undisturbed natural environment of this Commonwealth.

§ 281.202. Areas where general composting facilities are prohibited.

(a) Except for areas that were permitted prior to April 9, 1988, a general composting facility may not be operated as follows:

(1) *Floodplain.* In the 100-year floodplain of waters of this Commonwealth unless demonstrated that the composting facility can be protected during flooding.

(2) *Wetland.*

(i) In or within 300 feet of an exceptional value wetland, as defined in § 105.17 (relating to wetlands).

(ii) For a general composting facility permitted on or after December 23, 2000, other than an expansion of a general composting facility that was permitted prior to December 23, 2000, in or within 100 feet of a wetland other than an exceptional value wetland, unless storage and processing will not occur within that distance or storage and processing take place in an enclosed facility and one of the following is true:

(A) If the operation is in or along the wetland, the operator has received a permit from the Department under Chapter 105 (relating to dam safety and waterway management).

(B) If the operation is not in or along the wetland, no adverse hydrologic or water quality impacts will result.

(3) *Occupied dwelling.* Within 300 feet measured horizontally from an occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to the facility being closer than 300 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(4) *Perennial stream.* Within 100 feet of a perennial stream, unless one of the following applies:

(i) Storage and processing will not occur within 100 feet of a perennial stream and no adverse impacts to the perennial stream will result.

(ii) Storage and processing take place in an enclosed facility and no adverse hydrologic or water quality impacts will result.

(5) *Property line.* Within 50 feet of a property line unless the operator demonstrates one of the following:

(i) That actual processing of waste is not occurring within 50 feet of a property line.

(ii) That storage and processing occurring within 50 feet of a property line take place in an enclosed facility.

(iii) That the owner of the adjacent property has provided a written waiver consenting to the facility being closer than 50 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(6) *Water source.* Within 1/4 mile upgradient and within 300 feet downgradient of a private or public water source.

(7) *Water table.* In an area where the pad or vessel will be in contact with the seasonal high water table or perched water table.

(8) *School, park or playground.*

(i) For a municipal waste transfer facility permit issued on or after December 23, 2000, except an expansion of a municipal waste transfer facility permitted prior to December 23, 2000, within 300 yards of the following:

(A) A building which is owned by a school district or school and used for instructional purposes.

(B) A park.

(C) A playground.

(ii) The current property owner of a school building, park or playground may waive the 300-yard prohibition by signing a written waiver. Upon receipt of the waiver, the Department will waive the 300-yard prohibition and will not use the prohibition as the basis for the denial of a new permit.

(b) Except as provided in subsection (c), this section does not apply to a feature that may come into existence after the date of the first newspaper notice under § 271.141 (relating to public notice by applicant).

(c) This section does not apply to a feature that may come into existence after the date of the first newspaper notice under this subsection if the following apply:

(1) The person or municipality publishes a notice of intent to file an application for a general composting facility permit. The notice, which is separate from the newspaper notice required by § 271.141, shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the facility is proposed to be located. The notice shall include a brief description of the location and proposed operation of the facility.

(2) The person or municipality files an administratively complete application with the Department within 1 year from the date of the first newspaper notice under this subsection.

DAILY OPERATIONS

§ 281.211. Signs and markers.

(a) A person or municipality that operates a general composting facility shall identify the facility for the duration of operations by posting and maintaining a sign which will be clearly visible and can be easily seen and read at the junction of each access road and public road unless otherwise approved by the Department. The sign shall be constructed of a durable, weather resistant material. The sign shall show the name, business address and telephone number of the person or municipality operating the facility, the operating hours of the facility and the number of the current permit authorizing operations at the facility.

(b) Permanent physical markers for the grid coordinate system and permit area markers shall be:

(1) Posted and maintained during the duration of the operations to which they pertain.

(2) Clearly visible, readable and uniform throughout the operation.

(3) Permanently fixed and made of a durable material.

(c) The perimeter of the site shall be clearly marked before the beginning of operations.

(d) The permanent physical markers for the grid coordinate system shall be installed at the locations set forth in the permit, prior to the beginning of operations. The base line of the grid system shall be marked with two permanent monuments that show elevation.

§ 281.212. Access roads.

(a) An access road shall be designed, constructed and maintained to prevent erosion to the maximum extent possible and to prevent contributions of sediment to streams or runoff outside the permit area.

(b) A crossing of a perennial or intermittent stream or a wetland shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachments or water obstructions shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) An access road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 25-year, 24-hour precipitation event. The drainage system shall comply with Chapter 102 (relating to erosion control).

(d) An access road shall be paved or surfaced with asphalt, gravel, cinders or other equivalent material approved by the Department in the permit. An access road shall be capable of withstanding the load limits projected by the applicant under § 281.115 (relating to plan for access roads). The maximum sustained grade of an access road may not exceed 12%.

(e) An access road negotiable by loaded collection vehicles shall be provided from the entrance gate of the area to each unloading area, treatment facility or impoundment. An access road shall also be provided to surface and groundwater monitoring points approved by the Department under § 281.254 (relating to soil and groundwater monitoring).

(f) Roads shall be constructed on a base that is capable of withstanding anticipated loads.

(g) Prior to the construction of a road, topsoil shall be removed, stored on a stable site and protected against erosion and compaction until restoration of the road.

(h) The disturbed areas adjacent to a road shall be vegetated or otherwise stabilized to prevent erosion.

(i) Access roads shall be designed, constructed and maintained to allow the orderly egress and ingress of vehicular traffic when the facility is in operation, including during inclement weather.

§ 281.214. Measurement and inspection of waste.

(a) An operator of a general composting facility that has received, is receiving or will receive 30,000 or more cubic yards of solid waste in a calendar year shall weigh solid waste when it is received. The scale used to weigh solid waste shall conform to 3 Pa.C.S. Chapter 41 (relating to the Consolidated Weights and Measures Act) and 70 Pa. Code Part I (relating to general provisions). The operator of the scale shall be a licensed public weighmaster under 3 Pa.C.S. Chapter 41 and 70 Pa. Code Part I.

(b) The operator of a facility that is not required by subsection (a) to weigh waste when it is received shall accurately measure waste by volume or weight prior to unloading.

(c) The operator of a general composting facility shall inspect and monitor incoming waste to ensure that the receipt of waste is consistent with this article and the permit.

§ 281.215. Equipment.

(a) The operator shall maintain on the site equipment necessary for operation of the facility in accordance with the permit. The equipment shall be maintained in an operable condition.

(b) If a breakdown of the operator's equipment occurs, the operator shall utilize standby equipment as necessary to comply with the act, the environmental protection acts, this subchapter and its permit conditions.

(c) Equipment shall be operated and maintained to prevent solid waste from being unintentionally removed from the site.

(d) Equipment shall be cleaned at frequencies specified in the permit based on scheduled or emergency maintenance periods.

(e) Provision shall be made for the routine operational maintenance of the facility.

§ 281.217. Air resources protection.

(a) The operator shall control fugitive air contaminants and otherwise prevent and control air pollution under the Air Pollution Control Act (35 P. S. §§ 4001—4014), Article III (relating to air resources) and § 281.218 (relating to nuisance minimization and control).

(b) A person or municipality may not cause or allow open burning at the facility.

§ 281.218. Nuisance minimization and control.

(a) The operator shall control and minimize the attraction, harborage or breeding of vectors.

(b) The operator shall control and minimize conditions not otherwise prohibited by this subchapter that are harmful to the environment or public health, or which create safety hazards, odors, dust, noise, unsightliness and other public nuisances.

§ 281.220. Litter.

(a) The operator may not allow solid waste, compost or other materials to be blown or otherwise deposited offsite.

(b) Fences or other barriers sufficient to control blowing litter shall be located in the area immediately downwind from the composting and storage areas unless operations are conducted within an enclosed building or the solid waste or compost being stored cannot create blowing litter.

(c) At least weekly, blown off and intercepted litter shall be collected from fences, roadways, tree-lined barriers and other barriers, and disposed or stored in accordance with the act and regulations thereunder, unless a greater frequency is set forth in the permit.

§ 281.221. Radiation monitoring and response.

(a) An operator of a commercial composting facility that will receive sewage sludge or unseparated municipal waste, or both, shall implement the action plan approved under § 281.119 (relating to radiation protection action plan).

(b) An operator of a commercial composting facility that will receive sewage sludge or unseparated municipal waste, or both, shall monitor incoming waste in accordance with the Department's "Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document Number 250-3100-001 or in a manner at least as protective of the environment, facility staff and public health and safety. Monitoring

shall meet the requirements of this section and the facility's approved radiation protection action plan.

(c) Radiation detector elements shall be as close as practical to the waste load and in an appropriate geometry to monitor the waste. The radiation monitoring system shall be set to alarm at a level no higher than 10 microrentgen per hour ($\mu\text{R/hr}$) above the average background at the facility when any of the radiation detector elements is exposed to a Cesium-137 gamma radiation field. Radiation detector elements shall be shielded to maintain the average background below 10 $\mu\text{R/hr}$. If capable of energy discrimination, the radiation monitoring system shall be set to detect gamma rays of a 50 kiloelectron volt (keV) energy and higher.

(d) An operator shall have portable radiation monitors capable of determining the radiation dose rate and presence of contamination on a vehicle that has caused an alarm. Upon a confirmed exceedance of the alarm level in subsection (c), a radiological survey of the vehicle shall be performed.

(e) An operator shall notify the Department immediately and isolate the vehicle when radiation dose rates of 20 $\mu\text{Sv}^{\text{h}^{-1}}$ (2 mrem $^{\text{h}^{-1}}$) or greater are detected in the cab of a vehicle, 500 $\mu\text{Sv}^{\text{h}^{-1}}$ (50 mrem $^{\text{h}^{-1}}$) or greater are detected from any other surface, or contamination is detected on the outside of the vehicle.

(f) Monitoring equipment shall be calibrated at a frequency specified by the manufacturer, but not less than once a year.

(g) If radioactive material is detected at a composting facility, the vehicle containing the radioactive material may not leave the facility without written Department approval and an authorized United States Department of Transportation exemption form.

§ 281.222. Daily volume.

A person or municipality operating a composting facility may not receive solid waste at the facility in excess of the maximum daily volume approved in the permit.

COMPOSTING PROVISIONS

§ 281.231. Composting pad or vessel.

(a) Solid waste may not be composted, loaded, unloaded or stored, except on a composting pad or vessel that meets the requirements of this section.

(b) The composting pad or vessel shall be adequate in size and capacity to manage the projected solid waste, compost and residue volumes.

(c) A composting pad or vessel shall be:

(1) For a pad, capable of preventing the migration of waste and leachate generated from the composting process through the pad.

(2) Designed, constructed and maintained to protect the integrity of the pad or vessel during the projected life of the facility.

(3) Designed to collect leachate.

(4) For a pad, constructed of nonearthen material.

(5) Inspected for uniformity, damage and imperfections during construction and installation.

(6) Designed and operated so that the physical and chemical characteristics of the composting pad or vessel and its ability to restrict the flow of solid waste, solid waste constituents or leachate is not adversely affected by the leachate.

(d) The operator shall inspect the composting pad or vessel in a manner and frequency approved by the Department in the permit.

(e) Upon completion of the construction of a composting pad or vessel, the operator shall:

(1) Submit a certification by a registered professional engineer on forms provided by the Department. The certification shall describe the composting pad or vessel being certified, using drawings and plans if appropriate and shall state that the actual construction was observed by the engineer or persons under his direct supervision, and that the construction was carried out in a manner that is consistent with the permit.

(2) Notify the Department that the facility is ready for inspection. Solid waste may not be composted, and no solid waste or compost may be stored, loaded or unloaded on the composting pad or in the composting vessel, until the Department has conducted an inspection and has transmitted its written approval to the permittee indicating that the construction was done according to the permit.

§ 281.234. Sale or utilization of compost.

Prior to sale or utilization of compost, the operator shall obtain a general permit from the Department under Chapter 271, Subchapters I or J (relating to beneficial use of municipal waste; and beneficial use of sewage sludge by land application).

SOIL AND WATER PROTECTION

§ 281.251. General requirements.

(a) The operator may not cause or allow a point or nonpoint source discharge of pollution from or on the facility to surface waters of this Commonwealth.

(b) A general composting facility shall be operated to prevent and control water pollution. An operator shall operate and maintain necessary surface and groundwater treatment facilities until surface or groundwater pollution from or on the facility has been permanently abated.

(c) Neither compost nor municipal waste may be stored where continuous or intermittent contact could occur between the compost or waste and groundwater.

(d) The operator may not cause or allow water pollution within or outside of the site.

§ 281.253. Sedimentation ponds.

(a) Surface drainage from the disturbed area shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the site. The Department may waive the required use of sedimentation ponds when a person demonstrates to the Department that sedimentation ponds are not necessary to meet the requirements of § 281.251 (relating to general requirements).

(b) Sedimentation ponds shall be constructed, operated and maintained under this section, Chapters 102 and 105 (relating to erosion control; and dam safety and waterway management) and the minimum design criteria contained in the United States Soil Conservation Service's Engineering Standard 378, 'Pond' Pa., as amended.

(c) Sedimentation ponds and other treatment facilities shall be maintained until removal of the ponds and facilities is approved by the Department.

(d) A pond shall include a nonclogging, dewatering device approved by the Department that will allow the draining of the water from the inflow. The dewatering

device may not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(e) The ponds shall be designed, constructed and maintained to prevent short circuiting to the maximum extent possible.

(f) The design, construction and maintenance of a sediment pond under this section does not relieve the operator of the responsibility for complying with the applicable treatment requirements and effluent limitations established under § 281.251.

(g) At a minimum, sedimentation ponds shall be capable of treating the runoff resulting from a 25-year, 24-hour precipitation event.

(h) A sedimentation pond shall be designed and inspected during construction under the supervision of a registered professional engineer, who shall certify to the Department upon completion of construction that the pond was constructed as approved in the permit.

§ 281.254. Soil and groundwater monitoring.

(a) If required by the Department as part of the permit, the operator shall conduct soil or groundwater monitoring, or both. The monitoring shall be in accordance with §§ 273.282—273.288 (relating to water quality monitoring), as required by the Department, and the terms and conditions of the permit, and shall continue for the period specified in Section 281.282 (relating to cessation of operations).

(b) For purposes of interfacing with §§ 273.282—273.288, the following terms apply:

(1) The term "disposal area" shall be substituted with "area where storage and processing occur."

(2) The term "municipal waste landfill" shall be substituted with "composting facility."

(3) The term "disposed" shall be substituted with "stored or processed."

§ 281.255. Water supply replacement.

(a) A person or municipality operating a composting facility which adversely affects a water supply by degradation, pollution or other means shall restore or replace the affected water supply with an alternative source that is of like quantity and quality to the original supply at no additional cost to the owner.

(b) A temporary water supply shall be provided as soon as practicable but not later than 48 hours after receipt of one of the following:

(1) Information showing that the operator is responsible for adversely affecting the water supply.

(2) Notice from the Department that the operator is responsible for adversely affecting the water supply.

(c) A permanent water supply shall be provided as soon as practicable but not later than 90 days after the receipt of one of the following:

(1) Information showing that the operator is responsible for adversely affecting the water supply.

(2) Notice from the Department that the operator is responsible for adversely affecting the water supply.

(d) Permanent water supplies include development of a new well with a distribution system, interconnection with a public water supply or extension of a private water supply, but do not include provision of bottled water or a water tank supplied by a bulk water hauling system, which are temporary water supplies.

EMERGENCY PROCEDURES

§ 281.263. Implementation of contingency plan.

(a) The operator of the facility shall immediately implement the applicable provisions of the approved contingency plan when there is an emergency. For purposes of this section, an emergency shall include a fire, spill or other hazard, that threatens public health and safety, public welfare or the environment and personal injury.

(b) During an emergency, the operator shall:

(1) Assess actual or potential hazards to public health and safety, public welfare and the environment that are occurring or may occur.

(2) Ensure that fires, spills or other hazards do not occur, reoccur or spread to other solid waste at the facility.

(3) Immediately telephone the Department and county emergency management agency, and report the following information:

(i) The name of the person reporting the incident and telephone number where that person can be reached.

(ii) The name, address and permit number of the facility.

(iii) The date, time and location of the emergency.

(iv) A brief description of the nature of the emergency, the type and quantity of the solid waste involved and what dangers to public health and safety, public welfare and the environment exist or may occur.

(v) The nature of injuries.

(vi) The parts of the emergency plan being implemented to alleviate the emergency.

(c) After an emergency, the operator of the facility shall do the following:

(1) Clean up the area affected by the emergency and treat, store or dispose of recovered solid waste, contaminated soil, contaminated water or other material in a manner approved by the Department.

(2) Prevent processing or storage of solid waste in the area affected by the emergency until the operator has cleaned up the area, and the Department has inspected and approved the cleanup.

RECORDKEEPING AND REPORTING

§ 281.271. Daily operational records.

(a) A person or municipality that operates a general composting facility shall make and maintain an operational record for each day that municipal waste is received, processed or transported offsite.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside of this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The weight or volume of each material recycled, marketed or disposed of as a result of the process.

(5) A record of deviations from the approved design or operational plans.

(6) A record of activities for which entries are needed to comply with the annual operation report required in § 281.272 (relating to annual operation report).

(7) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(8) A description of waste handling problems or emergency disposal activities.

(9) A record of each incident in which radioactive material is detected in waste loads. The record shall include:

(i) The date, time and location of the occurrence.

(ii) A brief narrative description of the occurrence.

(iii) Specific information on the origin of the material, if known.

(iv) A description of the radioactive material involved, if known.

(v) The name, address and telephone numbers of the supplier or handler of the radioactive material and the name of the driver.

(vi) The final disposition of the material.

(c) The operator shall maintain accurate operational records sufficient to determine whether municipal waste is being stored in compliance with Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the environmental protection acts. These records shall be made available to the Department upon request.

§ 281.272. Annual operation report.

(a) A person or municipality that operates a general composting facility shall submit to the Department an annual operation report on or before June 30 of each year.

(b) The annual operation report, which shall be submitted on a form supplied by the Department, shall include the following:

(1) The county in which the waste originated, or if the waste originated outside of this Commonwealth, the state.

(2) The weight or volume of each type of waste received.

(3) The weight or volume of each material recycled, marketed or disposed of as a result of the process.

(4) A current certificate of insurance, as specified in § 271.374(a) (relating to proof of insurance coverage), evidencing continuous coverage for public liability insurance as required by § 271.371 (relating to insurance requirement).

(5) Changes in the previous year concerning the information required by §§ 271.124 and 271.125 (relating to identification of interests; and compliance information). The report shall state if no changes have occurred.

(6) A change in the ownership of the land upon which the facility is located or a change in a lease agreement for the use of the land that may affect or alter the operator's rights upon the lands.

(7) A written update of the total bond liability for the facility under § 271.331 (relating to bond and trust amount determination). If additional bond is determined to be necessary, it shall be submitted to the Department within 90 days after the annual report is due.

(8) Certification that the operator has received all analyses required by § 287.54 (relating to chemical analysis of waste) for each type of residual waste or special handling waste received at the facility during the calendar year.

(9) A record of detected radioactive materials.

(c) The annual operation report shall be accompanied by a nonrefundable annual permit administration fee of \$700 in the form of a check payable to the "Commonwealth of Pennsylvania."

CESSATION AND CLOSURE

§ 281.282. Cessation of operations.

(a) Upon cessation of composting operations at the facility, the operator shall remove solid waste and structures or other materials which contain or are contaminated with solid waste, and shall provide for the processing or disposal of the waste or material under the act, the environmental protection acts and this title.

(b) Areas requiring vegetation shall be revegetated under §§ 281.241 and 281.242 (relating to general requirements; and standards for successful revegetation).

(c) An operator required under § 281.254 (relating to soil and groundwater monitoring) to conduct soil monitoring may discontinue soil monitoring upon cessation of composting operations with the Department's approval. In deciding whether to allow the discontinuance of monitoring, the Department will consider the operational history of the facility, the likelihood that groundwater degradation will manifest itself in the future and other relevant factors.

(d) An operator required under § 281.254 to conduct groundwater monitoring may discontinue groundwater monitoring after cessation of composting operations and cleanup only upon written approval by the Department. In deciding whether to allow discontinuance of monitoring, the Department will consider the operational history of the facility, the likelihood that groundwater contamination will manifest itself in the future, whether the remediation standards in § 271.342(b)(4) (relating to final closure recertification) are met and maintained and other relevant factors.

CHAPTER 283. RESOURCE RECOVERY AND OTHER PROCESSING FACILITIES

Subchapter B. APPLICATION REQUIREMENTS GENERAL PROVISIONS

§ 283.102. Operating plan.

An application shall contain:

(1) A narrative description of the general operating plan for the proposed facility, including the origin, composition and weight or volume of solid waste that is proposed to be processed at the facility, the process to be used at the facility, the daily operational methodology of the proposed process, the loading rate, the proposed capacity of the facility and the expected life of the facility.

(2) A plan for an alternative waste handling or disposal system during periods when the proposed facility is not in operation, including procedures to be followed in case of equipment breakdown. Procedures may include the use of standby equipment, extension of operating hours and contractual agreements for diversion of municipal waste to other facilities.

(3) An operational safety, fire prevention and emergency response plan that will adequately protect workers

and patrons of the facility, prepared by an expert in the field of industrial hygiene and safety.

(4) A plan for assuring that solid waste received at the facility is consistent with § 283.201 (relating to basic limitations).

(5) A plan for training equipment operators and other personnel concerning the operation and approved design of the facility.

(6) The proposed operating hours of the proposed facility.

(7) A study that documents the short-term and long-term effects that the facility will have on the public and private water supply. The study shall include, but not be limited to, effects of pollution, contamination, diminution and alternative sources of water adequate in quantity and quality for the purposes served by the public and private water supply.

(8) An explanation of how the applicant intends to comply with § 283.214 (relating to measuring and inspection of waste).

§ 283.103. Maps and related information.

An application shall contain a topographic map of the proposed permit area and adjacent area, including necessary narrative descriptions, which show the following:

(1) The boundaries and names of present owners of record of land, both surface and subsurface, and including easements, rights-of-way and other property interests, for the proposed permit area and adjacent area; the boundaries of the land within the proposed permit area; and a description of title, deed or usage restrictions affecting the proposed permit area.

(2) The boundaries of the land to be affected over the estimated total life of the proposed operation.

(3) The location and name of surface water bodies, such as springs, streams, lakes, ponds, wetlands, constructed or natural drains and irrigation ditches that are located on the proposed permit area and adjacent area.

(4) The location and name of public and private water sources that are located on or within 1/4-mile of the proposed facility. If more than 50 wells are located within the 1/4-mile radius, the applicant may identify only the closest wells in each direction and generally describe the location and number of wells within 1/4-mile of the proposed facility.

(5) The location of rights-of-way for high-tension power lines, pipelines, railroads and public and private roads within 300 feet of the proposed facility.

(6) The location of buildings currently in use within 300 feet of the proposed facility.

(7) The anticipated location of water quality monitoring points, if monitoring is required by the Department.

(8) The boundaries of land within the proposed permit area or adjacent area identified in § 283.202 (relating to areas where resource recovery facilities and other processing facilities are prohibited).

(9) The location of underground mine shafts on the permit area and the adjacent area.

(10) The municipalities in which the permit area is proposed to be located.

(11) The location of the 100-year floodplain boundaries.

(12) The location of access roads to and within the proposed permit area, including slopes, grades and lengths of the roads.

(13) The location of barriers, fences and similar structures required by § 283.212 (relating to access control).

(14) The water diversion, collection, conveyance, erosion and sedimentation control, treatment, storage and discharge facilities to be used.

(15) The solid waste storage or loading/unloading areas.

(16) The areas of land for which a bond will be posted under Chapter 271, Subchapter D (relating to financial assurances requirements).

(17) The location, size and use of buildings and related facilities which will be used in the operation, including their horizontal and vertical dimensions.

(18) The location of scales and weigh stations to be used in the operation.

(19) Utilities to be installed at the facility.

(20) A designated area for vehicles for use in the event of the detection of waste containing radioactive material. The designated area shall, by location or shielding, protect the environment, facility staff and public from radiation originating in the vehicle. The Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, Document Number 250-3100-001, describes various factors to consider in determining an appropriate designated area.

§ 283.107. Soil and groundwater monitoring plan.

(a) If required by the Department, the applicant shall submit a groundwater monitoring plan to detect groundwater degradation from the facility.

(b) If required by the Department, the applicant shall submit a soil monitoring plan to detect soil contamination from the facility.

§ 283.112. Relationship to county plans.

(a) This section requires the submission of certain information in the permit application when the Department has given final approval to a municipal waste management plan for the county in which the proposed facility, or proposed additional capacity for a facility, would be located, and the county has submitted to the Department legal documents necessary to implement the plan under § 272.245 (relating to submission of implementing documents).

(b) An application shall contain the following:

(1) An explanation of whether the proposed facility is provided for in the approved plan for the host county. A facility is "provided for" if it is designated by the host county to provide capacity assurance in the approved host county plan. A facility analyzed as part of a planning process, but not designated, will not be considered "provided for."

(2) If the proposed facility is not provided for in the approved host county plan:

(i) A detailed explanation of whether the proposed facility will interfere with implementation of the approved host county plan.

(ii) A detailed explanation of whether the proposed facility will interfere with municipal waste collection, storage, transportation, processing or disposal in the host county.

(iii) A detailed response to objection, if any, filed by the governing body of the host county within 60 days of the written notice under section 504 of the act (35 P.S. § 6018.504).

§ 283.113. Radiation protection action plan.

(a) An application shall contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting.

(b) The action plan shall be prepared in accordance with the Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, Document Number 250-3100-001, or in a manner at least as protective of the environment, facility staff and public health and safety and which meets all statutory and regulatory requirements.

(c) The action plan shall be incorporated into the facility's approved waste analysis plan under § 271.613 (relating to waste analysis plan).

§ 283.114. Daily volume.

The application shall contain a proposed maximum daily volume for the facility, and a detailed justification for the volume, based on §§ 271.126 and 271.127 (relating to requirement for environmental assessment; and environmental assessment).

RECYCLING

§ 283.121. Recycling plan.

An application shall contain a plan for salvaging and recycling waste materials received at the facility for which recycling is cost effective, including proposed salvage areas, salvaging methods and anticipated markets for salvaged materials under § 283.281 (relating to salvaging of materials).

**Subchapter C. OPERATING REQUIREMENTS
GENERAL PROVISIONS**

§ 283.201. Basic limitations.

(a) A person or municipality may not own or operate a municipal waste processing facility other than a transfer facility or composting facility, unless the Department has first issued a permit to the person or municipality for the facility under this chapter.

(b) A person or municipality that operates a municipal waste processing facility other than a transfer or composting facility shall comply with the following:

(1) The operating requirements of the act, this subchapter and the applicable requirements of Chapter 271 (relating to municipal waste management—general provisions).

(2) The plans and specifications in the permit, the terms and conditions of the permit, the environmental protection acts, this title and orders issued by the Department.

(c) A person or municipality that operates a facility subject to this chapter may not allow residual waste or special handling waste to be handled at the facility unless the Department has specifically approved the processing of the waste as part of the permit.

(d) A person or municipality that operates a facility subject to this subchapter may not:

(1) Mix solid waste with, or store solid waste in close proximity to, other solid waste so as to create a risk of

fire or explosion, or a risk of the accumulation of poisonous or otherwise harmful vapors or gases.

(2) Allow explosive waste to be stored, processed or disposed at the facility.

(e) Hazardous waste subject to Article VII (relating to hazardous waste management) may not be disposed, processed or stored at municipal waste processing facilities subject to this subchapter.

(f) Lead acid batteries may not be processed at the facility except for purposes of removal for recycling or disposal.

(g) On and after September 26, 1990, loads composed primarily of leaf waste may not be processed at the facility except for purposes of composting.

(h) A person or municipality may not allow solid waste generated outside the host county for a facility to be received, disposed or otherwise managed at the facility if the transportation to, or disposal or management at, the facility would violate applicable laws in effect in the county or state in which the waste was generated, or state or local solid waste management plans in effect where the waste was generated.

(i) Sections 283.121—283.123 (relating to recycling) also apply.

(j) The approved mitigation measures identified in the permit application shall be completed before a facility may accept waste unless otherwise authorized in writing by the Department for technical reasons.

(k) The following radioactive material controlled under specific or general license or order authorized by any Federal, State or other government agency may not be processed at the facility, unless specifically exempted from disposal restrictions by an applicable State or Federal statute or regulation:

(1) Naturally-occurring and accelerator-produced radioactive material.

(2) Byproduct material.

(3) Source material.

(4) Special nuclear material.

(5) Transuranic radioactive material.

(6) Low-level radioactive waste.

(l) The following radioactive material may not be processed at the facility, unless approved in writing by the Department and the processing does not endanger the environment, facility staff or public health and safety.

(1) Short lived radioactive material from a patient having undergone a medical procedure.

(2) TENORM.

(3) Consumer products containing radioactive material.

(m) The limitations in subsections (k) and (l) do not apply to radioactive material as found in the undisturbed natural environment of this Commonwealth.

§ 283.202. Areas where resource recovery facilities and other processing facilities are prohibited.

(a) Except for areas that were permitted prior to April 9, 1988, a municipal waste processing facility subject to this chapter may not be operated as follows:

(1) *Floodplain.* In the 100-year floodplain of waters of this Commonwealth, unless the Department approves in the permit a method of protecting the facility from a 100-year flood consistent with the Flood Plain Manage-

ment Act (32 P. S. §§ 679.101—679.601) and the Dam Safety and Encroachment Act (32 P. S. §§ 693.1—693.27).

(2) *Wetlands.*

(i) In or within 300 feet of an exceptional value wetland as defined in § 105.17 (relating to wetlands).

(ii) For a processing facility permit issued on or after December 23, 2000, other than an expansion of a processing facility that was permitted prior to December 23, 2000, in or within 100 feet of a wetland other than an exceptional value wetland, unless for a processing facility other than a resource recovery facility storage and processing will not occur within that distance or storage and processing take place in an enclosed facility and one of the following is true:

(A) If the operation is in or along the wetland, the operator has received a permit from the Department under Chapter 105 (relating to dam safety and waterway management).

(B) If the operation is not in or along the wetland, no adverse hydrologic or water quality impacts will result.

(3) *Occupied dwelling.*

(i) For a processing facility permit issued prior to December 23, 2000, or for an expansion of a resource recovery facility or other processing facility that was permitted prior to December 23, 2000, within 300 feet measured horizontally from an occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to the facility being closer than 300 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner. This siting limitation does not apply to onsite infectious and chemotherapeutic waste incineration facilities which are not commercial facilities.

(ii) For a processing facility permit issued on or after December 23, 2000, within 300 yards measured horizontally from an occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to the facility being closer than 300 yards. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(4) *Perennial stream.* Within 100 feet of a perennial stream unless the storage and processing will not occur within that distance and no adverse hydrologic or water quality impacts will result.

(5) *Property line.* Within 50 feet of a property line unless the operator demonstrates one of the following:

(i) That actual processing of waste is not occurring within 50 feet of a property line.

(ii) That storage and processing take place in an enclosed facility.

(iii) That the owner of the adjacent property has provided a written waiver consenting to the facility being closer than 50 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

(6) *School, park or playground.*

(i) For a resource recovery facility permit issued on or after September 26, 1988, except an expansion of a resource recovery facility permitted prior to September 26, 1988, within 300 yards of the following:

(A) A building which is owned by a school district or school and used for instructional purposes.

(B) A park.

(C) A playground.

(ii) The current property owner of a school building, park or playground may waive the 300-yard prohibition by signing a written waiver. Upon receipt of the waiver, the Department will waive the 300-yard prohibition and will not use the prohibition as the basis for the denial of a new permit.

(b) Except as provided in subsection (c), this section does not apply to a feature that may come into existence after the date of the first newspaper notice under § 271.141 (relating to public notice by applicant).

(c) This section does not apply to a feature that may come into existence after the date of the first newspaper notice under this subsection if the following apply:

(1) The person or municipality publishes a notice of intent to file an application for a municipal waste processing permit. The notice, which is separate from the newspaper notice required by § 271.141, shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the facility is proposed to be located. The notice shall include a brief description of the location and proposed operation of the facility.

(2) The person or municipality files an administratively complete application under § 271.202 (relating to receipt of application and completeness review) with the Department within 1 year from the date of the first newspaper notice under this subsection.

DAILY OPERATIONS

§ 283.211. Signs and markers.

(a) A person or municipality that operates a facility subject to this subchapter shall identify the facility and the recycling drop-off center required under § 283.282 (relating to recycled materials collection center) for the duration of municipal waste processing operations by posting and maintaining a sign which is clearly visible and can be easily seen and read at the junction of each access road and public road. The sign shall be constructed of a durable, weather-resistant material. The sign shall show the name, business address and telephone number of the person or municipality operating the facility, the operating hours of the facility and the number of the current permit authorizing operations at the facility.

(b) Permit area markers and the permanent physical markers for the grid coordinate system shall be:

(1) Posted and maintained for the duration of the operation to which they pertain.

(2) Clearly visible, readable and uniform throughout the operation.

(3) Permanently fixed and made of a durable material.

(c) The perimeter of the site shall be clearly marked before the beginning of operations.

§ 283.212. Access control.

(a) A gate or other barrier shall be maintained at potential vehicular access points to block unauthorized access to the site when an attendant is not on duty.

(b) The operator shall maintain a fence or other suitable barrier around the site sufficient to prevent unauthorized access.

(c) Access to the site shall be limited to when an attendant is on duty.

§ 283.213. Access roads.

(a) An access road shall be designed, constructed and maintained to prevent erosion to the maximum extent possible and to prevent contributions of sediment to streams or runoff outside the site.

(b) A crossing of a perennial or intermittent stream or a wetland shall be made using bridges, culverts or similar structures. Bridges, culverts or other encroachments or water obstructions shall meet the requirements of Chapter 105 (relating to dam safety and waterway management).

(c) An access road shall have a drainage system that is compatible with the natural drainage system, structurally stable and which will pass safely the peak flow from a 24-hour, 25-year precipitation event. The drainage system shall comply with Chapter 102 (relating to erosion control).

(d) An access road shall be paved or surfaced with asphalt, gravel, cinders or other equivalent material approved by the Department in the permit. An access road shall be capable of withstanding the load limits projected by the applicant under § 283.105 (relating to plan for access roads). The maximum sustained grade of an access road may not exceed 12%.

(e) An access road negotiable by loaded collection vehicles shall be provided from the entrance gate of the area to each unloading area, treatment facility or impoundment.

(f) A road shall be constructed on a base that is capable of withstanding anticipated loads.

(g) Disturbed areas adjacent to a road shall be vegetated or otherwise stabilized to prevent erosion.

(h) An access road shall be maintained to control dust and to prevent or control the tracking of mud on or off site.

(i) An access road shall be designed, constructed and maintained to allow the orderly egress and ingress of vehicular traffic when the facility is in operation, including during inclement weather.

§ 283.214. Measurement and inspection of waste.

(a) An operator of a municipal waste processing facility that has received, is receiving or will receive 30,000 or more cubic yards of solid waste in a calendar year shall weigh solid waste when it is received. The scale used to weigh solid waste shall conform to 3 Pa.C.S. Chapter 41 (relating to the Consolidated Weights and Measures Act) and 70 Pa. Code Part I (relating to general provisions). The operator of the scale shall be a licensed public weighmaster under 3 Pa.C.S. Chapter 41 and 70 Pa. Code Part I.

(b) The operator of a facility that is not required by subsection (a) to weigh waste when it is received, shall accurately measure waste by volume or weight prior to unloading.

(c) The operator of a facility shall inspect and monitor incoming waste to insure that the receipt of waste is consistent with this article.

§ 283.215. Equipment.

(a) The operator shall maintain on the site equipment necessary for operation of the facility in accordance with the permit. The equipment shall be maintained in an operable condition.

(b) If a breakdown of the operator's equipment occurs, the operator shall utilize standby equipment as necessary to comply with the act, the environmental protection acts, this subchapter and its permit conditions.

(c) Equipment shall be operated and maintained to prevent solid waste from being unintentionally removed from the facility.

(d) Equipment used to handle putrescible solid waste with which operations personnel are in direct contact shall be cleaned at the end of each working day or every 24 hours. Other equipment shall be cleaned at frequencies specified in the permit based on scheduled or emergency maintenance periods.

§ 283.216. Unloading area.

(a) The approach and unloading area shall be adequate in size and design to facilitate the rapid unloading of municipal waste from collection vehicles and the unobstructed maneuvering of the vehicles and other equipment.

(b) The loading areas and unloading areas shall be constructed of impervious material which is capable of being cleaned by high-pressure water spray and shall be equipped with drains or sumps connected to a sanitary sewer system or treatment facility to facilitate the removal of water. Drains or treatment systems may be connected to a sanitary sewer system if a waste characterization is submitted to the sewage sludge treatment plant operator and the operator finds that the treatment plant can fully treat the waste stream. Leachate may be collected in holding tanks prior to its transport to the sewage treatment facility.

(c) If the facility has an unloading pit, the facility shall have in place truck wheel curbs or tie downs that are sufficient to prevent trucks from backing into the pit or falling into the pit while unloading.

(d) An attendant or clearly marked signs shall direct vehicles to the unloading area.

(e) The operator shall ensure that collection vehicles unload waste promptly in unloading areas.

(f) Solid waste shall be confined to the unloading area or a storage area approved as part of the operator's permit.

(g) If bulky waste is handled or processed at the facility, the operator shall remove the waste daily or take other action sufficient to prevent nuisances or unsightliness.

(h) The facility shall have a storage capacity for the scheduled or emergency shutdown of processing operations that is equivalent to the waste that can be processed at the facility in 3 days, unless otherwise specified by the Department in the permit.

§ 283.217. Cleaning and maintenance.

(a) Areas within the building shall be kept clean.

(b) The operator may not allow putrescible waste to remain at the facility at the end of the day or for more than 24 hours except that putrescible waste may remain at the facility for any time period up to 72 hours over a weekend or 3-day weekend if provided for in the permit.

(c) Plumbing shall be properly maintained, and the floors shall be well drained.

(d) Processing equipment and areas that have contact with solid waste shall be capable of being cleaned by high-pressure water spray or other methods, and shall be

located near drains that connect to a sanitary sewer system or treatment facility. Drains or treatment systems may be connected in a sanitary sewer system if a waste characterization is submitted to the sewage sludge treatment plant operator and the operator finds that the treatment plant can fully treat the waste stream. Leachate may be collected in holding tanks prior to its transport to the sewage treatment facility.

(e) Provision shall be made for the routine operational maintenance of the facility.

(f) The operator shall inspect the facility daily to detect hot spots in the storage area, dust accumulation, vectors, litter and other problems, and promptly take necessary corrective actions.

§ 283.218. Air resources protection.

(a) Emissions from a facility subject to this chapter shall meet the requirements of the Air Pollution Control Act (35 P. S. §§ 4001—4014), Article III (relating to air resources), the terms or conditions of its permit and other applicable Department guidelines.

(b) The operator may not cause or contribute to an exceedance of any ambient air quality standards under § 131.3 (relating to ambient air quality standards).

(c) A person or municipality may not cause or allow open burning at the facility.

(d) In addition to the requirements of subsections (a)—(c) emissions from a facility subject to this chapter shall be, at a minimum, subject to the following:

(1) For new infectious or chemotherapeutic waste incinerators, best available technology standards for air quality control for the facilities, defined at §§ 121.1 and 127.12(a)(5) (relating to definitions; and content of applications).

(2) For existing infectious or chemotherapeutic waste incinerators, reasonably available technology control standards for the facilities, as required by section 2(b) of the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. § 6019.2(b)), known as the Infectious and Chemotherapeutic Waste Law and Department regulations.

(3) For new incinerators for waste other than infectious or chemotherapeutic waste, best available technology standards for the facilities defined at §§ 121.1 and 127.12(a)(5).

(4) For existing incinerators for waste other than infectious or chemotherapeutic waste, reasonably available technology control standards for the facilities, as required by Department regulations.

§ 283.219. Nuisance minimization and control.

(a) The operator shall control and minimize the attraction, harborage or breeding of vectors.

(b) The operator shall control and minimize conditions not otherwise prohibited by this subchapter that are harmful to the environment or public health, or which create safety hazards, odors, dust, noise, unsightliness and other public nuisances.

§ 283.220. Radiation monitoring and response.

(a) An operator shall implement the action plan approved under § 283.113 (relating to radiation protection action plan).

(b) An operator shall monitor incoming waste in accordance with the Department's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, Document Number 250-3100-001, or

in a manner at least as protective of the environment, facility staff and public health and safety. Monitoring shall meet the requirements of this section and the facility's approved radiation protection action plan.

(c) Radiation detector elements shall be as close as practical to the waste load and in an appropriate geometry to monitor the waste. The radiation monitoring system shall be set to alarm at a level no higher than 10 microrentgen per hour ($\mu\text{R/hr}$) above the average background at the facility when any of the radiation detector elements is exposed to a cesium-137 gamma radiation field. Radiation detector elements shall be shielded to maintain the average background below 10 $\mu\text{R/hr}$. If capable of energy discrimination, the radiation monitoring system shall be set to detect gamma rays of a 50 kiloelectron volt (keV) energy and higher.

(d) An operator shall have portable radiation monitors capable of determining the radiation dose rate and presence of contamination on a vehicle that has caused an alarm. Upon a confirmed exceedance of the alarm level in subsection (c), a radiological survey of the vehicle shall be performed.

(e) An operator shall notify the Department immediately and isolate the vehicle when radiation dose rates of 20 $\mu\text{Sv}^{\text{h}^{-1}}$ (2 $\text{mrem}^{\text{h}^{-1}}$) or greater are detected in the cab of a vehicle, 500 $\mu\text{Sv}^{\text{h}^{-1}}$ (50 $\text{mrem}^{\text{h}^{-1}}$) or greater are detected from any other surface, or contamination is detected on the outside of the vehicle.

(f) Monitoring equipment shall be calibrated at a frequency specified by the manufacturer, but not less than once a year.

(g) If radioactive material is detected, the vehicle containing the radioactive material may not leave the facility without written Department approval and an authorized United States Department of Transportation exemption form.

§ 283.223. Daily volume.

A person or municipality operating a resource recovery or other processing facility may not receive solid waste at the facility in excess of the maximum daily volume approved in the permit.

SOIL AND WATER PROTECTION

§ 283.231. General requirements.

(a) The operator may not cause or allow a point or nonpoint source discharge in violation of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) from or on the facility to surface waters of this Commonwealth.

(b) A municipal waste processing facility shall be operated to prevent and control water pollution. An operator shall operate and maintain necessary water pollution treatment facilities until water pollution from or on the facility has been permanently abated.

(c) A facility shall be operated to prevent or minimize contact by surface or groundwater with solid waste or processed material.

(d) The operator may not cause or allow water pollution on or off the site.

(e) The operator may not cause contamination of the soil on or off the site.

§ 283.232. Soil erosion and sedimentation control.

The operator shall manage surface water and control erosion and sedimentation to:

(1) Divert surface water away from the storage area with measures and structures necessary to handle surface water flows, based on a 25-year, 24-hour precipitation event, supported by written calculations and also in compliance with Chapter 102 (relating to erosion control).

(2) Meet the requirements of Chapters 102 and 105 (relating to erosion and sediment control; and dam safety and waterway management).

(3) Prevent erosion to the maximum extent possible, including if possible, using revegetation.

§ 283.233. Soil and groundwater monitoring.

(a) If required by the Department as part of the permit, the operator shall conduct soil or groundwater monitoring, or both. The monitoring shall be in accordance with §§ 273.282—273.288 (relating to water quality monitoring), as required by the Department, and the terms and conditions of the permit, and shall continue for the period specified in § 283.272 (relating to cessation of operations).

(b) For purposes of interfacing with §§ 273.282—273.288, the following terms apply:

(1) The term “disposal area” shall be substituted with “area where storage and processing occur.”

(2) The term “municipal waste landfill” shall be substituted with “resource recovery facility or other processing facility.”

(3) The term “disposed” shall be substituted with “stored or processed.”

§ 283.234. Water supply replacement.

(a) A person or municipality operating a municipal waste processing facility subject to this Chapter which adversely affects a water supply by degradation, pollution or other means shall restore or replace the affected water supply with an alternate source that is of like quantity and quality to the original supply at no additional cost to the owner.

(b) A temporary water supply shall be provided as soon as practicable but not later than 48 hours after one of the following:

(1) Receipt of information showing that the operator is responsible for adversely affecting the water supply.

(2) Receipt of notice from the Department that the operator is responsible for adversely affecting the water supply.

(c) A permanent water supply shall be provided as soon as practicable but not later than 90 days after one of the following:

(1) Receipt of information showing that the operator is responsible for adversely affecting the water supply.

(2) Receipt of notice from the Department that the operator is responsible for adversely affecting the water supply.

(d) Permanent water supplies include development of a new well with a distribution system, interconnection with a public water supply, or extension of a private water supply, but do not include provision of bottled water or a water tank supplied by a bulk water hauling system, which are temporary water supplies.

EMERGENCY PROCEDURES

§ 283.253. Implementation of contingency plan.

(a) The operator of the facility shall immediately implement the applicable provisions of the approved contin-

gency plan whenever there is an emergency. For purposes of this section, an emergency shall include a fire, spill or other hazard that threatens public health and safety, public welfare or the environment and personal injury.

(b) During an emergency, the operator shall:

(1) Assess actual or potential hazards to public health and safety, public welfare and the environment that are occurring or may occur.

(2) Ensure that fires, spills or other hazards do not occur, reoccur or spread to other solid waste at the facility.

(3) Immediately telephone the Department and county emergency management agency, and report the following information:

(i) The name of the person reporting the incident and telephone number where that person can be reached.

(ii) The name, address and permit number of the facility.

(iii) The date, time and location of the emergency.

(iv) A brief description of the nature of the emergency, the type and quantity of the solid waste involved and what dangers to public health and safety, public welfare and the environment exist.

(v) The nature of injuries.

(vi) The parts of the contingency plan being implemented to alleviate the emergency.

(c) After an emergency, the operator of the facility shall do the following:

(1) Clean up the area affected by the emergency and treat, store or dispose of recovered solid waste, contaminated soil, contaminated water or other material in a manner approved by the Department.

(2) Prevent processing, storage or disposal of solid waste in the area affected by the emergency until the operator has cleaned up the area, and the Department has approved the resumption of operation after the cleanup.

RECORDKEEPING AND REPORTING

§ 283.261. Daily operational records.

(a) The operator of a facility subject to this chapter shall make and maintain an operational record for each day that municipal waste is received, processed or transported offsite.

(b) The daily operational record shall include the following:

(1) The type and weight or volume of the solid waste received.

(2) The county in which the solid waste originated, or if the waste originated outside of this Commonwealth, the state.

(3) The transporters of the solid waste.

(4) The weight or volume of each material recycled or marketed as a result of the process.

(5) For bypassed wastes and waste products, the name and county or state of the facility where the solid waste is ultimately disposed and the weight or volume of waste disposed.

(6) A description of waste handling problems or emergency disposal activities.

(7) A record of deviations from the approved design or operational plans.

(8) A record of activities for which entries are needed in order to comply with the annual operation report required in § 283.262 (relating to annual operation report).

(9) A record of actions taken to correct violations of the act, the environmental protection acts and this title.

(10) A record of rejected waste loads and the reasons for rejecting the loads.

(11) A record of each incident in which radioactive material is detected in waste loads. The record shall include:

(i) The date, time and location of the occurrence.

(ii) A brief narrative description of the occurrence.

(iii) Specific information on the origin of the material, if known.

(iv) A description of the radioactive material involved, if known.

(v) The name, address and telephone numbers of the supplier or handler of the radioactive material and the name of the driver.

(vi) The final disposition of the material.

(12) For resource recovery facilities, a record of each vehicle, other than a combination, that exceeds 73,280 pounds gross weight and of each combination that exceeds 80,000 pounds gross weight.

(i) The record shall include:

(A) The gross weight of the vehicle when weighed at the facility.

(B) The registration plate number and home or base state registration of the vehicle.

(C) The name, business address and telephone number of the owner of the vehicle.

(D) The date and time when the vehicle was weighed at the facility.

(E) The date that the weight scale was last tested in accordance with 3 Pa.C.S. Chapter 41 (relating to the Consolidated Weights and Measures Act).

(ii) For purposes of this paragraph, the following terms have the following meanings, unless the content clearly indicates otherwise:

(A) *Combination*. Two or more vehicles physically interconnected in tandem. An example of a combination is a truck tractor attached to a semi-trailer.

(B) *Gross weight*. The combined weight of a vehicle or combination of vehicles and its load, excluding the driver's weight.

(C) *Registration*. The authority for a vehicle to operate on a highway as evidenced by the issuance of an identifying card and plate or plates.

(c) The operator shall maintain accurate operational records sufficient to determine whether municipal waste is being stored under Chapter 285, Subchapter A (relating to storage of municipal waste).

(d) Daily operational records shall be retained for the life of the facility bond, or longer if determined by the Department to be necessary to meet the standards of the

environmental protection acts, but in no case less than 5 years. These records shall be made available to the Department upon request.

§ 283.262. Annual operation report.

(a) An operator of a facility subject to this chapter shall submit to the Department an annual operation report on or before June 30 of each year.

(b) The annual operation report, which shall be submitted on a form supplied by the Department, shall include the following:

(1) A current certificate of insurance, as specified in § 271.374(a) (relating to proof of insurance coverage), evidencing continuous coverage for public liability insurance as required by § 271.371 (relating to insurance requirement).

(2) Changes in the previous year concerning the information required by §§ 271.124 and 271.125 (relating to identification of interests; and compliance information). The report shall state if no changes have occurred.

(3) A change in the ownership of the land upon which the facility is located or a change in a lease agreement for the use of the land that may affect or alter the operator's rights upon the land.

(4) A written update of the total bond liability for the facility under § 271.331 (relating to bond and trust amount determination). If additional bond is determined to be necessary, it shall be submitted to the Department within 90 days after the annual report is due.

(5) Certification that the operator has received all analyses required by § 287.54 (relating to chemical analysis of waste) for each type of residual waste or special handling waste received at the facility during the calendar year.

(6) A record of detected radioactive materials.

(c) The annual operation report shall be accompanied by a nonrefundable annual permit administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" for the following amounts:

(1) Seven hundred dollars for facilities that incinerate municipal waste.

(2) Seven hundred dollars for other municipal waste processing facilities subject to this chapter.

§ 283.264. Recycling fee.

(a) On and after October 26, 1988, the operator of a resource recovery facility shall pay the recycling fee, in the form of a check payable to the "Commonwealth of Pennsylvania, Recycling Fund," in accordance with Chapter 7 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.701—4000.706). This fee shall terminate in accordance with law.

(1) The recycling fee shall be paid on a quarterly basis, on or before the 20th day of April, July, October and January for the 3 months ending the last day of March, June, September and December respectively.

(2) A recycling fee payment shall be accompanied by a form provided by the Department and completed according to its instructions and hand signed by the operator.

(b) The fee shall be paid for solid waste received and processed at the facility on and after October 26, 1988, including, but not limited to, residual waste, special handling wastes, waste tires and other solid waste received at the facility. The fee does not apply to the following:

(1) Recyclable or reusable material received and separated from other waste at a collection, transfer, composting or processing facility associated with the facility, and which are marketed in accordance with subsection (d).

(2) Nonprocessable waste received at the facility and disposed at a landfill.

(c) The fee shall be \$2 per ton of weighed waste which is received and processed at the facility.

(d) The operator shall maintain complete and accurate records of the weight of materials which are salvaged and recycled from mixed waste after it has been received at the facility, the market where the materials were sent for recycling or reuse, the date that the materials were marketed and the weight of materials actually marketed for recycling. The operator may deduct the weight of materials salvaged and recycled from the facility from the weight of waste for which the fee payment is made, but only for the quarter in which the materials were actually marketed for recycling. These records shall be kept by the operator for 5 years for audit purposes, and shall be made available to the Department or its auditors, or both, on request.

CESSATION AND CLOSURE

§ 283.272. Cessation of operations.

(a) Upon cessation of processing operations at the facility, the operator shall immediately remove solid waste and structures or other materials which contain or are contaminated with solid waste, and shall provide for the processing or disposal of the waste or material in accordance with the environmental protection acts and this title.

(b) An operator required under § 283.233 (relating to soil and groundwater monitoring) to conduct soil monitoring may discontinue soil monitoring upon cessation of processing operations only upon written approval of the Department. In deciding whether to allow discontinuance of monitoring, the Department will consider the operational history of the facility, the likelihood that soil contamination will manifest itself in the future and other factors.

(c) An operator required under § 283.233 to conduct groundwater monitoring may discontinue groundwater monitoring after cessation of operations and cleanup only upon written approval by the Department. In deciding whether to allow discontinuance of monitoring, the Department will consider the operational history of the facility, the likelihood that groundwater contamination will manifest itself in the future, whether the remediation standards in § 271.342(b)(4) (relating to final closure certification) are met and maintained and other relevant factors.

RECYCLING AND WASTE REMOVAL

§ 283.281. Salvaging of materials.

(a) A person or municipality may not operate a resource recovery facility unless the operator has developed and is implementing a program to recycle waste materials received at the facility for which recycling is cost effective, in accordance with the plan approval under § 283.121 (relating to recycling plan).

(b) Salvaging and recycling of materials may not be allowed or conducted unless salvaging and recycling is controlled by the operator to prevent interference with prompt and sanitary operations and is conducted to prevent a health hazard or nuisance.

(c) Salvaged materials shall be promptly moved from the unloading area and stored in an approved area under Chapter 285 (relating to storage, collection and transportation of municipal waste) or transported offsite.

Subchapter D. ADDITIONAL APPLICATION REQUIREMENTS FOR SPECIAL HANDLING WASTES

§ 283.302. (Reserved).

Subchapter E. ADDITIONAL OPERATING REQUIREMENTS FOR SPECIAL HANDLING WASTES

§ 283.402. (Reserved).

CHAPTER 284. INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

Subch.

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Subchapter A. GENERAL PROVISIONS

GENERAL PROVISIONS

Sec.

- 284.1. Scope.
- 284.2. Permit by rule for infectious or chemotherapeutic waste processing facilities; qualifying facilities; general requirements.

GENERAL PROVISIONS

§ 284.1. Scope.

This chapter sets forth application and operating requirements for a person or municipality that operates an infectious or chemotherapeutic waste facility. The requirements in this chapter are in addition to the applicable requirements in Chapter 271 (relating to municipal waste management—general provisions).

§ 284.2. Permit by rule for infectious or chemotherapeutic waste processing facilities; qualifying facilities; general requirements.

(a) If the requirements of this section are met, the following onsite processing facilities for infectious and chemotherapeutic waste shall be deemed to have a municipal waste processing permit under this article:

(1) An onsite autoclave facility, including one which renders waste unrecognizable, which processes at least 50% of its own infectious waste generated onsite and accepts offsite waste for disinfection only from small quantity generators that generate less than 220 pounds per month of infectious waste if the following conditions are met:

(i) Processing of pathological waste is prohibited.

(ii) The retention time for processing bulk fluids (greater than 500 ml) allows for the complete vaporization of fluids.

(2) An onsite incineration facility that burns at least 50% of its own infectious or chemotherapeutic waste generated onsite and accepts offsite infectious or chemotherapeutic waste for incineration only from small quantity generators that generate less than 220 pounds per month of infectious or chemotherapeutic waste. This onsite incineration facility may process municipal waste generated onsite as long as the resulting ash is managed as processed infectious and chemotherapeutic waste.

(3) An onsite steam and superheated water disinfection facility which processes infectious waste, including one which renders waste unrecognizable, which processes at least 50% of its own infectious waste generated onsite and accepts offsite waste for disinfection only from small quantity generators that generate less than 220 pounds per month of infectious waste. Processing of pathological waste is prohibited.

(b) Generators that process and disinfect less than 220 pounds per month of infectious waste onsite and render the waste unrecognizable will be deemed to have municipal waste processing permits under this article if the requirements under subsections (c)—(g) are met. Generators that process and disinfect less than 220 pounds per month of infectious waste onsite without rendering the waste unrecognizable will be deemed to have municipal waste processing permits under this article if the requirements under subsections (c)—(g) are met and if the following requirements are met:

(1) The generator may dispose of the processed waste in a landfill or have the waste incinerated in a facility that has obtained written approval from the Department to accept the waste.

(2) The generator shall comply with the manifest requirements in § 284.701(b)(5) (relating to scope).

(c) The following requirements shall be met by facilities identified in subsections (a) and (b) to operate under a permit-by-rule:

(1) The facility complies with Chapter 285 and Subchapters E and F (relating to storage, collection and transportation of municipal waste; and infectious and chemotherapeutic waste).

(2) The facility has necessary permits under the environmental protection acts, and is operating in accordance with the environmental protection acts and the regulations promulgated thereunder, the terms and conditions of permits and orders of the Department.

(3) The operator maintains at the facility in a readily accessible place the following information:

(i) For a processing facility identified in subsection (a), a written plan for managing infectious waste generated at the facility, including waste handling, equipment operation and maintenance, processing method, disinfection monitoring procedures including quality assurance procedures, and a description of how noninfectious waste is managed to prevent commingling.

(ii) For processing facilities subject to a permit-by-rule, daily records of the weight or volume of the waste that is processed, the method and location of disposal facilities for wastes from the processing facility, and waste handling problems and emergencies.

(4) Processing does not have an adverse effect on public health, safety, welfare or the environment.

(5) The waste is disinfected in accordance with § 284.321 (relating to infectious waste monitoring requirements).

(6) Disinfection occurs before or during processing of the waste.

(7) A log is maintained for each disinfection unit and is made available to the Department upon request. The log shall record the following:

(i) The date, time and operator for each use.

(ii) The dates and results of calibration.

(iii) The postdisinfection color reading of temperature sensitive tape and the results of biological indicator spore testing, in accordance with § 284.321 for steam disinfection facilities.

(iv) Results of ash testing which utilizes a methodology approved by the Department, for incineration facilities.

(8) Remaining waste is managed in accordance with the act and the regulations promulgated thereunder. For onsite autoclave facilities which do not render the waste unrecognizable, the processing residue shall be manifested in accordance with Subchapter H (relating to manifesting).

(9) For incineration facilities, an air quality permit shall be obtained under the Air Pollution Control Act (35 P. S. §§ 4001—4015).

(10) For facilities identified in subsection (a), notice is provided to the Department by the operator of a facility which indicates an intention to operate under permit-by-rule and which includes the following information:

(i) The name and address of the facility.

(ii) A description of the processing activity.

(iii) The names and telephone numbers of the individuals responsible for operation of the processing facility.

(11) For facilities identified in subsection (a), the processed waste is disposed of in a landfill or processed in an incinerator that has obtained written approval from the Department to dispose or process the waste.

(d) Chapter 271, Subchapter E (relating to civil penalties and enforcement) is applicable to facilities subject to permit-by-rule.

(e) Notwithstanding a provision in this section to the contrary, a facility will not be deemed to have a permit-by-rule if it causes or allows violations of the environmental protection acts, the regulations promulgated thereunder, the terms or conditions of a permit issued by the Department, or an order issued by the Department, or causes a public nuisance. A facility that is subject to permit-by-rule is not required to apply for a permit under this article, if that facility operates in accordance with this section.

(f) Generators who qualify for a permit-by-rule may render the waste unrecognizable by processes such as thermal treatment, melting, encapsulation, shredding, grinding, tearing or breaking.

(g) The requirements under Chapter 271, Subchapter D (relating to financial assurances requirements) which relate to bonding and insurance are waived for facilities which are deemed to have a permit under this section.

Subchapter B. GENERAL PERMITS

Sec.

GENERAL

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GENERAL

§ 284.101. Authorization for general permits.

(a) In accordance with this subchapter, the Department may issue general permits on a regional or Statewide basis for a category of mobile or stationary infectious waste processing facilities or stationary chemotherapeutic waste processing facilities if the Department determines the following:

(1) The processing facilities and the waste to be processed in the category are substantially similar.

(2) The processing facilities in the category can be adequately regulated utilizing standard conditions without harming or presenting a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth.

(3) The processing facilities in the category will comply with the requirements established in the permit and with the standards and requirements for design, construction, operation, maintenance and monitoring in Chapter 283 (relating to resource recovery and other processing facilities), and Subchapter D (relating to processing facilities).

(b) The Department may issue a general permit upon its own motion under § 284.115 (relating to Department initiated general permits) or upon an application from a person or municipality under §§ 284.111—284.114 (relating to issuance of a general permit).

(c) The Department may issue a general permit for the mixing of disinfection products with infectious waste to perform processing.

(d) The Department may issue a general permit for the processing of mixtures of the same types of waste that are infectious or residual wastes.

(e) The Department may modify, suspend, revoke or reissue general permits under this subchapter as it deems necessary to prevent harm or the threat of harm to the health, safety or welfare of the people or environment of this Commonwealth.

(f) The Department will not issue a general permit for a commercial infectious or chemotherapeutic waste processing facility, including commercial incinerators.

§ 284.102. Nature of a general permit; substitution for individual applications and permits.

(a) When the Department issues a general permit for an infectious or chemotherapeutic waste processing facility on either a regional or Statewide basis, persons or municipalities who intend to process infectious or chemotherapeutic waste in accordance with the terms and conditions of the general permit may do so without filing an individual application for, and first obtaining, an individual permit.

(b) The use of an applicable general permit shall satisfy the requirement to obtain a permit in § 271.101 (relating to permit requirement) if the following are met:

(1) The processing activities are conducted in accordance with the terms and conditions of the applicable general permit.

(2) The person or municipality conducting the processing activities is authorized to operate under the general permit at the time that the Department issued the

general permit or under the applicable general permit in accordance with § 284.132 or § 284.133 (relating to determination of applicability; and registration).

(c) Notwithstanding subsections (a) and (b), the Department may require a person or municipality authorized by a general permit to apply for, and obtain, an individual permit when the person or municipality is not in compliance with the conditions of the general permit or is conducting an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

ISSUANCE OF A GENERAL PERMIT

§ 284.111. Application for general permit.

(a) A person or municipality may apply to the Department for the issuance of a general permit for a specific category of processing of infectious or chemotherapeutic waste.

(b) An application for the issuance of a general permit for processing infectious or chemotherapeutic waste shall be submitted on a form prepared by the Department and shall contain the following:

- (1) A description of the waste.
- (2) A characterization of the waste as either infectious or chemotherapeutic.
- (3) An operation plan which contains the following:
 - (i) A description of the proposed processing activity and equipment.
 - (ii) A description of the method proposed to receive infectious or chemotherapeutic waste which ensures the waste is handled separately from other solid waste until processing and disposal, and that prevents unauthorized persons from having access to or contact with the waste.
 - (iii) A description of the procedure for managing containers which arrive in a leaking condition, which includes whether the waste is processed immediately, repacked or rejected.
 - (iv) A description of the method proposed to unload and process infectious or chemotherapeutic waste, limiting the number of persons handling the waste and minimizing the possibility of exposure of that waste to employees and the public using or visiting the facility.
 - (v) A description of the method proposed for disinfecting emptied, reusable infectious waste containers, transport vehicles and facility equipment which are known or suspected to be contaminated with infectious waste.
 - (vi) A description of the method proposed for handling and disposal of infectious or chemotherapeutic waste containers which cannot be reused.
 - (vii) A description of reuse of containers if the surfaces of the containers have been protected from direct contact with chemotherapeutic waste.
 - (viii) A description of the means by which provisions will be made to require the use of clean gloves and clean uniforms along with other protective clothing to provide protection of employees against exposure to infectious or chemotherapeutic waste.
 - (ix) A description of the means by which provisions will be made to require decontamination of a person having had bodily contact with infectious or chemotherapeutic waste while handling that waste at the facility.

(x) A description of the method proposed to quantify, on a weight basis, the maximum amount of infectious or chemotherapeutic waste to be stored and processed each month.

(xi) A schedule of the operating hours of the facility.

(xii) A description of the method proposed to assure that infectious or chemotherapeutic waste received at the facility is consistent with § 283.201 (relating to basic limitations).

(xiii) A description of periodic testing using biological indicators which demonstrate effective disinfection of the waste, in accordance with § 284.321 (relating to infectious waste monitoring requirements).

(xiv) A description of closure activities which are proposed to be carried out upon cessation of operations, in accordance with § 283.272 (relating to cessation of operations).

(xv) A description of how the processing residue will be managed.

(xvi) A description of how aerosols will be minimized and controlled during processing activities.

(4) A contingency plan which provides procedures to be used for emergency situations including, at a minimum, spills of infectious or chemotherapeutic waste and ruptures of containers containing the waste. The plan shall include procedures for cleanup and disinfection of spill area, protection of personnel, disposal of spill residue and repackaging of the waste. The plan shall also include a description of an alternative waste handling system during periods when the proposed facility is not in operation, including procedures to be followed in the case of equipment breakdown. Alternate waste handling procedures may include use of standby equipment, extension of operating hours and contractual agreements for diversion of infectious or chemotherapeutic waste to other facilities.

(5) A personnel training plan which describes the hiring of equipment operators and the training of personnel involved in the handling and processing of infectious or chemotherapeutic waste. The plan shall include a detailed explanation of the operation and contingency plans.

(c) A nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$1,000 shall accompany the application.

(d) The application requirements in subsection (b) may be waived or modified for the mixing of disinfection products with infectious waste to perform processing.

§ 284.112. Completeness review.

(a) After receipt of an application for the issuance of a general permit, or an application for a determination of applicability under § 284.132 (relating to determination of applicability), the Department will determine whether the application is administratively complete. For purposes of this subchapter, an application is administratively complete if it contains the necessary analyses, fees, documents and information, regardless of whether the analyses, fees, documents and information would be sufficient for the issuance of the permit or the determination of applicability.

(b) If the application is not administratively complete, the Department will return it to the applicant, within 60 days of receipt of the application. A written statement of the specific analyses, fees, documents or information that are required to make the application administratively complete will accompany an application which is returned.

(c) The Department will deny the application if the applicant fails to provide the analyses, fees, documents and information within 90 days of receipt of the notice in subsection (b).

§ 284.113. Public notice and review period.

(a) The Department will publish notice of receipt of an application for a general permit in the *Pennsylvania Bulletin* when the Department determines that the application is administratively complete.

(b) The notice shall include:

(1) A brief description of the waste and the category of processing of infectious or chemotherapeutic waste which is identified in the application as a candidate for a general permit.

(2) The Department's address and telephone number at which interested persons or municipalities may obtain further information and review a copy of the application for the general permit.

(3) A brief description of the procedures for public comment on the general permit application.

(4) A statement that interested persons or municipalities may submit comments to the Department within 60 days of the publication of the notice, and may recommend conditions upon, revisions to, approval or disapproval of the general permit application.

(c) The Department may hold a public meeting or public hearing on the application for a general permit.

(d) Upon issuance of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the general permit. If a county has made recommendations to the Department concerning conditions, revisions or disapproval of the permit during the 60-day comment period, and the Department has overridden the recommendations, the Department will publish its justification for overriding the recommendations in the *Pennsylvania Bulletin*.

(e) Each applicant for coverage under the general permit shall provide written notice to each municipality in which the applicant intends to operate under a general permit.

§ 284.114. Approval or denial of an application.

The Department may not issue a general permit for a category of processing of infectious or chemotherapeutic waste unless the applicant has affirmatively demonstrated the following:

(1) The application for the general permit is accurate and complete.

(2) The applicant has complied with the requirements of §§ 284.101, 284.102 and 284.111—284.113.

(3) The proposed processing activities will be conducted in a manner that will not harm or present a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth through exposure to constituents of the waste during the processing activities and afterwards.

§ 284.115. Department-initiated general permits.

(a) The Department may issue or modify a general permit for a category of processing of infectious or chemotherapeutic waste upon its own motion in accordance with this section.

(b) At least 60 days prior to the issuance or modification of a general permit under this section, the Department

will publish a notice in the *Pennsylvania Bulletin* of intent to issue or modify a general permit under this section.

(c) The notice required by subsection (b) shall include the following:

(1) A clear and specific description of the category of processing of infectious or chemotherapeutic waste eligible for coverage under the proposed general permit.

(2) The standards in § 284.101(a) (relating to authorization for general permits), and a brief description of the reasons for the Department's determination that the category of processing is eligible for coverage under a general permit in accordance with these standards.

(3) A brief description of the terms and conditions of the proposed general permit.

(4) A brief description of the procedures for public comment on the general permit in accordance with this subchapter.

(5) The Departmental address and telephone number at which interested persons or municipalities may obtain further information and review a copy of the proposed general permit.

(6) A statement that interested persons or municipalities may submit comments to the Department within 60 days of the publication of the notice and may recommend conditions upon, revisions to, and approval or disapproval of the proposed general permit.

(d) The Department may hold a public meeting or public hearing on the proposed general permit or proposed modification to the general permit.

(e) Upon issuance or modification of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the new or modified general permit.

CONTENT OF GENERAL PERMITS AND WAIVERS

§ 284.121. Contents of general permits.

Each general permit issued by the Department will include, at a minimum:

(1) A clear and specific description of the category of processing of infectious or chemotherapeutic waste eligible for coverage under the general permit.

(2) The standards in § 284.101(a) (relating to authorization for general permits) and a brief explanation of the reasons for the Department's determination that the category of processing is eligible for coverage under the general permit in accordance with the standards in § 284.101(a).

(3) A specification of registration or determination of applicability requirements established in accordance with § 284.131 (relating to authorization for persons or municipalities to be included in a general permit) and the fee imposed on registrants or applicants for coverage under the general permit.

(4) An effective date, and a fixed permit term, which may not exceed 10 years from the effective date. If the Department renews a general permit, the term may not exceed the term of the original permit.

(5) A set of terms and conditions governing the construction, operation, maintenance, inspection and monitoring of the processing activities covered by the general permit as are necessary to assure compliance with this act, this article and the environmental protection acts.

(6) A requirement that persons or municipalities who conduct activities authorized by the general permit shall allow authorized representatives of the Commonwealth, without advance notice or a search warrant, upon the presentation of appropriate credentials, and without delay, to have access to areas in which the activities covered by the general permit will be, are being or have been conducted to ensure compliance with the act and the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6), known as the Infectious and Chemotherapeutic Waste Law, regulations promulgated thereunder and a permit, license or order issued by the Department under the act.

(7) A requirement that the activities authorized by the general permit will not harm or present a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth.

(8) A requirement that waste be accompanied by a properly completed manifest, in accordance with Subchapter H (relating to manifesting), when appropriate.

(9) A requirement that waste be delivered by a licensed transporter in accordance with Subchapter G (relating to transporter licensing), when appropriate.

(10) A requirement that the processing facility operate in accordance with local, State and Federal requirements.

(11) A requirement that the processing residue be disposed of in a landfill that has obtained written approval by the Department to dispose of the waste.

(12) A requirement that an up-to-date list of names, addresses and telephone numbers of employees that have been designated by the permittee to respond to emergencies at the processing facility be maintained at the facility.

(13) A requirement that individual employee training records be maintained at the processing facility.

(14) A requirement for use of additional indicators selected by the Department to monitor the disinfection process.

(15) A requirement that daily records of the weight or volume of the waste processed, the method and location of disposal facilities for wastes from the processing facility and waste handling problems and emergencies be maintained for 3 years.

(16) A requirement that a log be maintained for each disinfection unit for 3 years that records the following:

- (i) The date, time and operator for each use.
 - (ii) The dates and results of calibration.
 - (iii) The results of biological indicator spore testing.
 - (iv) Other information that the Department may require relating to the disinfection process.
- (17) Requirements for closure.
- (18) A requirement that autoclaves meet the following:
- (i) Processing of pathological waste is prohibited.
 - (ii) The retention time for processing bulk fluids (greater than 500 ml) allows for the complete vaporization of fluids.

§ 284.122. Waiver or modification of certain requirements.

(a) An operation that is approved under this subchapter does not require an individual processing or disposal permit under this article.

(b) For an operation that is approved under this subchapter, the Department may waive or modify any application and operating requirements in this article, except the Department may not waive § 271.123 and may not waive or modify Chapter 271, Subchapter A, §§ 271.124, 271.125, 271.129 and Subchapter E.

REGISTRATION AND DETERMINATION OF APPLICABILITY

§ 284.131. Authorization for persons or municipalities to be included in a general permit.

(a) A person or municipality is authorized to operate under a general permit if one of the following occurs:

(1) If the applicable general permit requires persons or municipalities to register with the Department prior to operating under the general permit, the person or municipality has registered in accordance with the terms of the general permit and the requirements of this subchapter.

(2) If the applicable general permit requires persons or municipalities to apply for and obtain a determination of applicability from the Department prior to operating under the general permit, and the Department has made this determination.

(b) Registration or application requirements and time limits, if any, shall be set forth in the general permit governing each category of processing infectious or chemotherapeutic waste. The general permit shall also set forth the area or region within which each category of processing is allowed.

(c) At a minimum, the registration or application for determination of applicability shall include:

(1) The name, address and location of the person or municipality conducting the activity covered under the general permit.

(2) A description of the waste, including a characterization of the waste as either infectious or chemotherapeutic, that will be processed in accordance with the general permit.

(3) A description of the proposed method of processing of the waste.

(4) The name or number of the general permit being utilized for the activity.

(5) A demonstration that the activities which the person or municipality intends to conduct are authorized by the general permit.

(6) A signed and notarized statement by the person or municipality conducting the activity authorized by the general permit, on a form prepared by the Department, which states that the person or municipality agrees to accept the conditions imposed by the general permit for processing of infectious or chemotherapeutic waste under the general permit.

(d) A person or municipality that registers for coverage under a general permit or applies to the Department for a determination of applicability of a general permit shall submit a copy of the registration or application to each municipality in which the processing activity will be located. The submission shall occur at the same time that the person or municipality files the registration or application with the Department.

§ 284.132. Determination of applicability.

If a general permit specifies that potential users of the permit shall obtain a determination of applicability from the Department prior to conducting the activity autho-

rized by the general permit, the procedures in this section shall be followed in addition to those stated in § 284.131 (relating to authorization for persons or municipalities to be included in a general permit):

(1) An application for a determination of applicability shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$500.

(2) The Department will provide notice in the *Pennsylvania Bulletin* of each application for a determination of applicability for a general permit which the Department has determined to be administratively complete. The Department may indicate in the notice that interested persons or municipalities may submit comments to the Department within a 60-day period. If a comment period is provided, counties may recommend to the Department conditions, revisions or disapproval of the application. The Department may hold a public meeting or public hearing on an application for determination of applicability for a general permit.

(3) The Department will make a determination that a general permit is or is not applicable to an activity for which an application for determination of applicability is filed within 60 days from the publication of the notice under paragraph (2) or, if a comment period is provided, within 120 days after publication of the notice. The time period does not include periods beginning with the date the Department has requested in writing that the applicant make substantive corrections or changes to the application and ending with the date that the applicant submits corrections or changes to the Department's satisfaction. Failure by the Department to comply with this timetable will not be construed or understood to constitute grounds for a determination that the general permit applies to the proposed activity.

(4) The Department will determine that the general permit does not apply to the proposed processing activity and deny coverage under the general permit if the applicant fails to demonstrate the following to the Department's satisfaction:

- (i) That the proposed activity is consistent with the terms and conditions of the general permit.
- (ii) That the activity does not have the potential to harm or present a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

(5) The Department will publish notice of its decision regarding each determination of applicability in the *Pennsylvania Bulletin*. If a county has made recommendations to the Department concerning conditions, revisions or disapproval of the permit during a 60-day comment period, and the Department has overridden the recommendations, the Department will publish its justification for overriding the recommendations in the *Pennsylvania Bulletin*. The applicant for a determination of applicability for coverage under a general permit shall provide written notice to each municipality in which the applicant intends to operate pursuant to the general permit.

(6) The Department may amend, suspend or revoke coverage under a general permit if the waste or the activity is not consistent with the terms and conditions of the general permit.

§ 284.133. Registration.

(a) When a general permit specifies that potential users are required to register with the Department prior to operating under the general permit, the procedures in

this section shall be followed in addition to those in § 284.131 (relating to authorization for persons or municipalities to be included in a general permit).

(1) A registration to operate under a general permit shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$250.

(2) The Department will publish notice of each registration to operate under a general permit in the *Pennsylvania Bulletin*. The registrant under a general permit shall provide written notice to each municipality in which the registrant intends to operate under the general permit.

(b) Persons or municipalities may conditionally operate under a general permit in accordance with the terms of the general permit immediately upon registering with the Department.

(c) Upon the request of the Department, a person or municipality shall provide sufficient information to demonstrate to the satisfaction of the Department that the person or municipality is authorized to operate under the general permit. The Department may refuse to issue or approve a registration if the person or municipality has failed to demonstrate that the person or municipality is in conformance with the general permit.

(d) The Department may amend, suspend or revoke registration under a general permit if the waste or the activity is not consistent with the terms and conditions of the general permit.

Subchapter C. TRANSFER FACILITIES

Sec.

284.201. Scope.

284.210. Application requirements.

284.220. Operating requirements.

§ 284.201. Scope.

This subchapter sets forth application and operating requirements for a person or municipality that operates a transfer facility for infectious or chemotherapeutic waste. The requirements in this subchapter are in addition to the applicable requirements in Chapter 271 (relating to municipal waste management—general).

§ 284.210. Application requirements.

An application to operate a transfer facility shall comply with §§ 279.101—279.111 (relating to general requirements).

§ 284.220. Operating requirements.

A person or municipality that operates a transfer facility shall comply with §§ 279.201—279.262.

Subchapter D. PROCESSING FACILITIES

Sec.

284.301. Scope.

284.310. Application requirements.

284.311. Plan for monitoring.

284.320. Operating requirements.

284.321. Infectious waste monitoring requirements.

§ 284.301. Scope.

This subchapter sets forth application and operating requirements for a person or municipality that operates a processing facility, other than a transfer or composting facility, for infectious or chemotherapeutic waste. The requirements in this subchapter are in addition to the applicable requirements in Chapter 271 (relating to municipal waste management—general provisions).

§ 284.310. Application requirements.

An application to operate a processing facility shall comply with §§ 283.101—283.114 (relating to general provisions).

§ 284.311. Plan for monitoring.

An application for a processing facility for infectious waste shall contain a plan, including necessary designs, procedures and test protocols on forms provided by the Department, for meeting the requirements of § 284.321 (relating to infectious waste monitoring requirements), including the following:

(1) The method by which disinfection will be accomplished.

(2) A description of the monitoring and quality assurance program to ensure disinfection.

§ 284.320. Operating requirements.

A person or municipality that operates a processing facility shall comply with §§ 283.201—283.224, 283.231—283.262 and 283.271—283.272.

§ 284.321. Infectious waste monitoring requirements.

(a) A person or municipality that disinfects infectious waste shall monitor the waste to ensure the following:

(1) For thermal processing or incineration, the absence of anaerobic or aerobic bacterial growth in a composite sample of processing residue or ash.

(2) For other disinfection processes, both of the following are met:

(i) The process shall be capable of inactivating vegetative bacteria, fungi, lipophilic/hydrophilic viruses, parasites and mycobacteria at a 6 log 10 reduction or greater.

(ii) Inactivating *Stearothermophilus* spores, *B. pumilus* or *B. subtilis* spores at a 4 log 10 reduction or greater.

(b) The operator of a facility that incinerates or thermally processes infectious waste shall submit to the Department a microbiological analysis of a composite sample of the processing or ash residue on forms provided by the Department at a minimum, quarterly during the life of the facility.

(c) The operator of a facility that incinerates infectious waste shall submit to the Department, at least annually during the life of the facility, a chemical analysis of composite samples of the ash residue on forms provided by the Department.

(d) If the facility disinfects infectious waste by means other than incineration or thermal processing, the operator shall perform a microbiological analysis of indicators removed from the processed waste. The analysis shall be conducted at a minimum, every 40 hours during the operational life of the facility, unless otherwise provided in a permit. The analyses shall be made available to the Department upon request.

(e) Unless the Department approves another indicator or test in writing, the following indicators shall be used to establish and verify the following processes:

(1) For autoclaving, spores of *Bacillus stearothermophilus*.

(2) For dry heat, gas or chemical disinfection, spores of *Bacillus subtilis* variety *niger* (globigii). Ethylene oxide may not be used for gas disinfection.

(3) For ionizing radiation, spores of *Bacillus pumilus*.

(f) Indicators used for methods of disinfection other than incineration or thermal processing shall be located prior to disinfection at a point where disinfection will be most difficult to achieve.

(g) Infectious waste will be considered to be infectious after disinfection, unless one of the following has occurred:

(1) For disinfection processes other than incineration or thermal processing, the indicator spores are determined by microbiological analysis to have been destroyed in accordance with subsection (a).

(2) For incineration or thermal processing using a test other than an indicator spore, a microbiological analysis determines that disinfection has occurred in accordance with subsection (a).

(h) The operator of the disinfection facility shall so certify that the requirements of subsection (a) have been met on a form provided by the Department.

(i) Ash or other processing residue shall be stored in accordance with § 284.418 or § 284.419 (relating to storage and containment of ash residue from infectious or chemotherapeutic waste incineration; and storage and containment of processing residue from an infectious or chemotherapeutic waste facility).

(j) Ash or other processing residue shall be transported in accordance with § 284.511 or § 284.514 (relating to transportation of ash residue from infectious or chemotherapeutic waste incineration; and transportation of processing residue from an infectious or chemotherapeutic waste facility).

(k) Compactors, grinders or similar devices may not be used to reduce the volume of infectious waste before the waste has been rendered noninfectious. If the volume reduction device is within a continuous, enclosed disinfection process and part of one processing system, then the reduction device may be used.

(l) The operator of an infectious waste processing facility shall dispose of ash or other processing residue from the facility in a landfill that has been approved by the Department to accept the waste, if the waste is disposed in this Commonwealth.

(m) In addition to other applicable requirements, an autoclave facility shall comply with the following:

(1) The processing of pathological waste is prohibited.

(2) The facility shall maintain a retention time for processing bulk fluids (greater than 500 ml) which allows for the complete vaporization of fluids.

Subchapter E. STORAGE

Sec.

284.401. Scope.

284.411. Basic storage requirements.

284.412. Sorting.

284.413. Duration of storage of infectious waste for generators.

284.414. Duration of storage of infectious waste for processors.

284.415. Storage containers.

284.416. Marking of containers.

284.417. Reuse of containers.

284.418. Storage and containment of ash residue from infectious or chemotherapeutic waste incineration.

284.419. Storage and containment of processing residue from an infectious or chemotherapeutic waste processing facility.

§ 284.401. Scope.

This subchapter sets forth operating requirements for a person or municipality that stores infectious or chemotherapeutic waste, ash residue from infectious or chemo-

therapeutic waste incineration and processing residue from an infectious or chemotherapeutic waste processing facility. The requirements in this chapter are in addition to the applicable requirements in Chapter 271 (relating to municipal waste management—general provisions) and the requirements in §§ 285.111—285.121 (relating to general provisions and types of storage).

§ 284.411. Basic storage requirements.

(a) Infectious and chemotherapeutic waste shall be stored and contained in a manner that:

(1) Maintains the integrity of the containers, prevents the leakage or release of waste from the containers and provides protection from water, rain and wind.

(2) Prevents the spread of infectious or chemotherapeutic agents.

(3) Affords protection from animals and does not provide a breeding place or a food source for insects or rodents.

(4) Maintains the waste in a nonputrescent state, using refrigeration ($\leq 7^{\circ}\text{C}$) or freezing (-18°C) when necessary.

(5) Prevents odors from emanating from the container.

(6) Prevents unauthorized access to the waste. As part of this requirement, the following shall be met:

(i) Enclosures and containers used for storage of infectious or chemotherapeutic waste shall be secured to deny access to unauthorized persons.

(ii) Enclosures and containers shall also be marked with prominent warning signs indicating the storage of infectious or chemotherapeutic waste.

(b) Enclosures at a waste generating or processing facility that are used for the storage of infectious or chemotherapeutic waste shall be constructed of finish materials that are impermeable and capable of being readily maintained in a sanitary condition. Storage areas shall be ventilated to minimize human exposure to the exhaust air.

(c) Infectious and chemotherapeutic waste may not be commingled with other waste.

(d) The generator may store infectious and municipal waste that has been sorted and separately containerized on the same cart for movement to an onsite processing or disposal facility. Chemotherapeutic waste may also be stored on the cart with municipal and infectious waste if it is sorted and separately containerized and if it is moved to an onsite incinerator.

§ 284.412. Sorting.

(a) Infectious and chemotherapeutic waste shall be placed in separate containers from other waste at the point of origin in the generating facility.

(b) Infectious and chemotherapeutic waste may be stored together in the same container if approved in writing by the Department.

(c) Used sharps, regardless of whether they are infectious or chemotherapeutic waste, may be stored in the same container if the requirements of §§ 284.413(a) and 284.415(a) and (b) (relating to duration of storage of infectious waste for generators; and storage containers) are met.

(d) Infectious waste shall be sorted at the point of origin in the generating facility into the following three classes, and each class shall be placed in a separate container:

(1) Used sharps.

(2) Fluids—quantities greater than 20 cubic centimeters.

(3) Other infectious waste.

(e) Chemotherapeutic waste shall be sorted at the point of origin in the generating facility into the following three classes, and each class shall be placed in a separate container:

(1) Used sharps.

(2) Fluids.

(3) Other chemotherapeutic waste.

(f) Sorted and separately containerized infectious waste may be placed together into another container for onsite handling or offsite transportation.

§ 284.413. Duration of storage of infectious waste for generators.

(a) Generators that store infectious or chemotherapeutic waste onsite shall meet the following requirements:

(1) Infectious waste, excluding used sharps, may be stored at room temperature until the storage container is full, but for no longer than 30 days from the date waste was first placed in the container.

(2) A storage container filled with infectious waste may be stored in a refrigeration unit for up to 30 days from the date waste was first placed in the container.

(3) A storage container of infectious waste that has been filled within 30 days from the date waste was first placed in the container may be frozen immediately for up to 90 days from the date waste was first placed in the container.

(b) If the infectious waste becomes putrescent during the storage period identified in subsection (a), the waste shall be moved offsite within 24 hours for processing or disposal.

(c) Used sharps containers may be used until full as long as the storage is in accordance with § 284.411 (relating to basic storage requirements).

§ 284.414. Duration of storage of infectious waste for processors.

If the waste processing facility is separate from the waste generating facility, infectious waste may not be stored at the waste processing facility for more than the following periods unless other periods are approved in a permit:

(1) Seventy-two hours at a temperature $\leq 28^{\circ}\text{C}$.

(2) Seven days in a refrigerator at $\leq 7^{\circ}\text{C}$.

(3) Thirty days in a freezer at -18°C .

§ 284.415. Storage containers.

(a) Infectious and chemotherapeutic waste shall be placed in containers that are:

(1) Leakproof.

(2) Impervious to moisture.

(3) Sufficient in strength to prevent puncturing, tearing or bursting during storage.

(b) In addition to the requirements of subsection (a), used sharps shall be stored in containers that are:

(1) Rigid.

(2) Tightly lidded.

(3) Puncture resistant.

(c) In addition to the requirements of subsection (a), infectious waste fluids—quantities greater than 20 cubic centimeters—and chemotherapeutic waste fluids shall be stored in containers that are:

(1) Break resistant.

(2) Tightly lidded or tightly stoppered.

(d) When bags are used as the only storage container, double or multiple bagging shall be employed and the following requirements shall be met:

(1) Upon packaging, the bags shall be securely tied.

(2) The bag shall be constructed of material of sufficient single thickness strength to meet the following:

(i) The ASTM standard D1709-91, *Test Method for Impact Resistance of Polyethylene Film by the Free Falling Dart Method*, with an impact resistance of 165 grams or greater (Method A).

(ii) The ASTM standard D1922-89, *Propagation Tear Resistance of Plastic Film and Thin Sheeting by Pendulum Method*, with a tearing resistance, parallel and perpendicular to the length of the bag, of 480 grams.

(iii) If the standards in subparagraphs (i) and (ii) are modified by ASTM, the standard that is in effect on the date of manufacture of the bags shall be applied.

(3) Bags shall include one of the following certifications indicating that the ASTM standards have been met:

(i) Each bag shall contain a printed certification by the manufacturer.

(ii) The manufacturer may issue a certification letter to the infectious or chemotherapeutic waste generator and print a certification on each packaged lot of the bags.

(4) Bags used as containers shall have sufficient seam strength that is at least equal in resistance to tearing and equally impermeable as the other portions of the bag.

(5) Bags used as containers shall be yellow in color for each package of chemotherapeutic waste and fluorescent orange, orange-red or red in color for each package of infectious waste and shall be labeled in accordance with § 284.416(c) (relating to marking of containers).

(e) Fluorescent orange, orange-red or red or yellow containers shall contain colorants which are organic pigments with no heavy metal content.

(f) With the exception of persons who work at a small quantity generator's operation, where less than 220 pounds of infectious and chemotherapeutic waste is generated per month, persons packaging infectious or chemotherapeutic waste for offsite transportation shall wear:

(1) Protective overalls.

(2) Heavy gloves of neoprene or equivalent materials.

§ 284.416. Marking of containers.

(a) The outermost container for each package of infectious or chemotherapeutic waste for offsite transportation shall be labeled immediately after packing. The label shall be securely attached and shall be clearly legible. Indelible ink shall be used to complete the information on the label. If handwritten, the label shall be at least 3 inches by 5 inches in dimension.

(b) The following information shall be included on the label:

(1) The name, address and telephone number of the generator.

(2) The date the waste was generated.

(3) The name of the transporter and, if applicable, Department-issued infectious and chemotherapeutic waste transporter license number.

(c) The following information shall be printed on the outermost container or bag for each package of infectious or chemotherapeutic waste for either onsite movement or offsite transportation:

(1) The words "infectious waste" or "chemotherapeutic waste," whichever is applicable.

(2) The universal biohazard symbol that conforms to the design shown in regulations of the United States Occupational Safety and Health Administration at 29 CFR 1910.145(f)(8)(ii) (relating to specifications for accident prevention signs and tags).

(d) The color coding scheme for infectious and chemotherapeutic waste bags and nonwall-mounted used sharps containers shall be fluorescent orange, orange-red or red in color, or predominately so, for infectious waste and yellow in color, or predominately so, for chemotherapeutic waste, with lettering and symbols in a contrasting color (for example, black).

(e) Stationary waste storage containers shall be lined with the appropriate colored bag for infectious or chemotherapeutic waste.

§ 284.417. Reuse of containers.

(a) Nonrigid containers shall be managed as either infectious or chemotherapeutic waste, based upon the contents of the container. These containers may not be reused.

(b) Corrugated fiberboard containers used for storage of infectious or chemotherapeutic waste may be reused if the surface of the container has been protected from direct contact with the waste.

(c) A rigid, nonfiberboard container used for the storage of infectious waste may be reused if one of the following applies:

(1) The container has been decontaminated utilizing a Department-approved decontamination procedure.

(2) The surface of the container has been protected from direct contact with infectious waste.

(d) A rigid container used for the storage of chemotherapeutic waste may be reused if the surface of the container has been protected from direct contact with chemotherapeutic waste.

§ 284.418. Storage and containment of ash residue from infectious or chemotherapeutic waste incineration.

(a) Ash residue from infectious or chemotherapeutic waste incineration shall be stored in accordance with the following:

(1) In an enclosed container, which may include a properly tarped container, or in an enclosed area, which may include an adequately ventilated building.

(2) On a pad that is no more permeable than 1×10^{-7} cm./sec.

(3) To prevent the release, dispersal or discharge of ash residue into the air, water or onto land.

(b) Ash residue may be commingled with other municipal waste if the commingled waste is from one generator and if storage of the commingled waste is in accordance with subsection (a).

§ 284.419. Storage and containment of processing residue from an infectious or chemotherapeutic waste processing facility.

(a) Processing residue from infectious or chemotherapeutic waste processing facilities shall be stored in an enclosed container, which may include a properly tarped container, or in an enclosed area, which may include an adequately ventilated building, in order to:

(1) Prevent the release, dispersal or discharge of processing residue into the air, water or onto land.

(2) Afford protection from animals, rain and wind.

(3) Prevent the development of a breeding place or food source for insects or rodents.

(4) Prevent the leakage of waste from the storage container.

(b) Processing residue from an infectious or chemotherapeutic waste processing facility may be commingled with other municipal waste if the commingled waste is from one generator and if storage of the commingled waste is in accordance with subsection (a).

Subchapter F. COLLECTION AND TRANSPORTATION

GENERAL

Sec.

284.501. Scope.

TYPES OF WASTE

284.511. Transportation of ash residue from infectious or chemotherapeutic waste incineration.

284.512. Transportation of infectious and chemotherapeutic waste; general provisions.

284.513. Transportation of infectious and chemotherapeutic waste; additional provisions.

284.514. Transportation of processing residue from an infectious or chemotherapeutic waste facility.

GENERAL

§ 284.501. Scope.

This subchapter sets forth the requirements for a person or municipality that collects and transports infectious or chemotherapeutic waste, ash residue from infectious or chemotherapeutic waste incineration and processing residue from an infectious or chemotherapeutic waste processing facility. The requirements in this chapter are in addition to the applicable requirements in Chapter 271 (relating to municipal waste management—general provisions) and the requirements in §§ 285.211—285.219 (relating to general provisions).

TYPES OF WASTE

§ 284.511. Transportation of ash residue from infectious or chemotherapeutic waste incineration.

(a) Ash residue from infectious or chemotherapeutic waste incineration shall be wetted immediately prior to loading, and shall remain wetted during transportation and unloading at a municipal waste landfill, to prevent the dispersal of ash residue.

(b) Ash residue from infectious or chemotherapeutic waste incineration shall be transported in an enclosed or covered vehicle to prevent dispersal of the residue.

(c) A transporter shall transport separately each generator's ash residue from infectious or chemotherapeutic waste.

(d) A transporter may transport ash residue from an infectious or chemotherapeutic waste incinerator that is commingled with other municipal waste if the com-

mingled waste is from one generator and the waste is transported separately from another generator's waste.

§ 284.512. Transportation of infectious and chemotherapeutic waste; general provisions.

(a) *General.* This section sets forth general requirements for a person or municipality that transports infectious or chemotherapeutic waste. Section 284.513 (relating to transportation of infectious and chemotherapeutic waste; additional provisions) sets forth additional provisions relating to the transportation of the waste.

(b) *Manner of transportation.* Infectious and chemotherapeutic waste shall be transported in a manner that:

(1) Maintains the integrity of the containers, prevents the leakage or release of waste from the containers and provides protection from water, rain and wind.

(2) Prevents the spread of infectious or chemotherapeutic agents.

(3) Affords protection from animals and does not provide a breeding place or a food source for insects or rodents.

(4) Maintains the waste in a nonputrescent state, using refrigeration ($\leq 7^{\circ}\text{C}$) or freezing (-18°C) when necessary.

(5) Prevents odors from emanating from the container.

(6) Prevents unauthorized access to the waste.

(c) *Containers.*

(1) Infectious and chemotherapeutic waste shall be transported in containers that are:

(i) Rigid.

(ii) Leakproof.

(iii) Impervious to moisture.

(iv) Sufficient in strength to prevent puncturing, tearing or bursting during transportation. A single-walled, corrugated fiberboard container shall be of a classified strength of at least 200 pounds per square inch, with a gross weight limit of at least 65 pounds at the time the container is manufactured. Compliance with these requirements shall be certified on the container by the manufacturer.

(2) In addition to the requirements of paragraph (1), used sharps shall be transported in containers that are tightly lidded.

(3) In addition to the requirement of paragraph (1), infectious waste fluids—quantities greater than 20 cubic centimeters—and chemotherapeutic waste fluids shall be transported in containers that are:

(i) Break resistant.

(ii) Tightly lidded or tightly stoppered.

(4) Bags meeting the requirements of § 284.415 (relating to storage containers) may be used to meet the requirements of this subsection that containers be leakproof and impervious to moisture.

(d) Infectious and chemotherapeutic waste may not be transported in the same containers, unless approved in writing by the Department. Infectious and chemotherapeutic waste shall be transported in separate vehicles from those used for other waste.

(e) Vehicles for transporting infectious or chemotherapeutic waste shall be noncompaction type vehicles.

(f) Load compartments of vehicles holding infectious or chemotherapeutic waste for transportation shall be con-

structed of materials that are impermeable and easily cleaned. Surfaces of vehicles that have been in direct physical contact with infectious or chemotherapeutic waste, because of a leak in the bag or container or because of another reason, shall be decontaminated as soon as possible after unloading.

(g) Infectious waste may not be kept in an unrefrigerated transport vehicle for more than 48 hours. If the vehicle is refrigerated ($\leq 7^{\circ}\text{C}$) or maintained at freezing temperatures (-18°C), the in-transit storage period may not exceed 5 days.

(h) Chutes may not be used by generators, processors or transporters to transfer infectious or chemotherapeutic waste at onsite or offsite locations.

§ 284.513. Transportation of infectious and chemotherapeutic waste; additional provisions.

(a) This section sets forth additional requirements for the transportation of infectious and chemotherapeutic waste. This section does not apply to vehicles used by a generator of less than 220 pounds of infectious and chemotherapeutic waste per month for transporting waste that he generated.

(b) Vehicles for transporting infectious or chemotherapeutic waste shall be identified on the two sides and back of the cargo compartment with the following:

(1) The transporter's Department-issued infectious and chemotherapeutic waste license number, if applicable.

(2) A placard or decal containing the phrase "infectious waste" or "chemotherapeutic waste," or both, and the universal biohazard symbol that conforms to the design shown in the United States Occupational Safety and Health Administration's regulations at 29 CFR 1910.145 (f)(8)(ii) (relating to specifications for accident prevention signs and tags). The placard or decal shall be capable of being read at a distance of 25 feet.

(c) A vehicle used for transporting infectious or chemotherapeutic waste shall contain, in a readily accessible place, a portable decontamination and spill containment unit, including at a minimum the following:

- (1) An adequate amount of absorbent material.
- (2) One gallon of hospital grade disinfectant in an appropriate applicator.
- (3) Fifty fluorescent orange, orange-red or red or yellow, or both, plastic bags that meet the requirements of § 284.415 (relating to storage containers). The bags shall be accompanied by seals and appropriate labels, and shall be large enough to overpack any container normally transported in the vehicle.

(4) Two sets of protective overalls, gloves, boots, caps, goggles and masks. The protective garments shall be oversized or fitted for the vehicle operators.

(5) A first aid kit, boundary marking tape and other appropriate safety equipment.

(d) The surface of vehicles that have not been in direct physical contact with infectious or chemotherapeutic waste shall be cleaned weekly. Drainage from the cleaning shall be discharged directly or through a holding tank to a sanitary sewer system or treatment facility.

(e) Individuals loading or unloading containers of infectious or chemotherapeutic waste onto or off transportation vehicles shall wear protective overalls and heavy gloves of neoprene or equivalent materials. Gloves and coveralls shall be decontaminated after each loading or unloading operation if the gloves and coveralls have been

contaminated or are suspected of having been contaminated. If no contamination occurs or none is suspected, decontamination shall be completed at the end of the working day or work shift.

§ 284.514. Transportation of processing residue from an infectious or chemotherapeutic waste facility.

(a) Processing residue from an infectious or chemotherapeutic waste facility shall be transported in an enclosed or covered vehicle to prevent dispersal of the residue.

(b) A transporter shall transport separately each generator's processing residue from infectious or chemotherapeutic waste.

(c) A transporter may transport processing residue from infectious or chemotherapeutic waste that is commingled with other municipal waste if the commingled waste is from one generator and the waste is transported separately from another generator's waste.

Subchapter G. TRANSPORTER LICENSING FOR INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

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GENERAL PROVISIONS

§ 284.601. Scope.

This subchapter sets forth the Department's requirements for licensing of persons and municipalities that transport infectious or chemotherapeutic waste.

§ 284.602. License requirement.

(a) Except as provided in subsection (b), a person or municipality may not transport infectious or chemotherapeutic waste unless the person has first obtained a license from the Department in accordance with this subchapter.

(b) This subchapter does not apply to the following:

(1) Onsite movement of infectious or chemotherapeutic waste by generators.

(2) Onsite movement of infectious or chemotherapeutic waste by owners or operators of permitted infectious or chemotherapeutic waste management facilities.

(3) Transportation by a generator of less than 220 pounds per month of infectious or chemotherapeutic

waste when transporting only the infectious or chemotherapeutic waste he generated if the manifesting requirements under § 284.701(b)(3) (relating to scope) are met.

(4) The transportation of infectious or chemotherapeutic waste generated outside this Commonwealth destined for processing or disposal outside this Commonwealth.

§ 284.603. Identification number.

A person or municipality subject to this chapter may not transport infectious or chemotherapeutic waste without first receiving an identification number. The number shall be one of the following:

(1) An EPA identification number obtained under section 3010 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. § 6930).

(2) An identification number obtained from the Department, if the identification number under paragraph (1) is not available.

LICENSE APPLICATION REQUIREMENTS

§ 284.611. General application requirements.

(a) An application for a license to transport infectious or chemotherapeutic waste shall be submitted to the Department, in writing, on forms provided by the Department. An application for a license shall be accompanied by information, specifications and other data required by the Department to determine compliance with this subchapter.

(b) The application shall contain the following:

(1) The applicant's identification number, as required by § 284.603 (relating to identification number).

(2) The name, mailing address, place of business, business telephone number and 24-hour emergency telephone number of the applicant.

(3) The average yearly total tonnage of infectious and chemotherapeutic waste picked up or delivered in this Commonwealth.

(4) A nonrefundable application fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$500.

(5) Information concerning terminal locations that will store infectious and chemotherapeutic waste in-transit.

(6) An identification of interests and compliance history, as provided in §§ 271.124 and 271.125 (relating to identification of interests; and compliance information).

(7) Collateral bond, as required by § 284.641 (relating to bond requirement).

(8) Certificate of insurance, as required by § 284.612 (relating to vehicular liability insurance).

(9) A contingency plan consistent with § 284.632 (relating to infectious or chemotherapeutic waste discharges or spills).

(c) An application for a license shall be certified by a responsible official of the applicant with a statement that the information contained in the application is true and correct to the best of the official's information and belief.

§ 284.612. Vehicular liability insurance.

(a) The application shall include a certificate of insurance issued by an insurance company authorized to do business in this Commonwealth, certifying that the applicant has comprehensive vehicular liability insurance in

force covering the operation of vehicles and associated infectious and chemotherapeutic waste transportation activities.

(b) The certificate of insurance shall expressly document coverage for property damage and bodily injury to third parties. The insurance coverage shall include coverage for the cost of cleaning up an infectious or chemotherapeutic waste spill, and damages arising from the spill. Minimum insurance coverage shall be \$500,000 annual aggregate, exclusive of claims administration and legal defense costs.

(c) Insurance coverage provided under this section shall comply with the following:

(1) The insurance policy shall follow the standard commercial or comprehensive vehicular liability policy forms approved by the Insurance Department, and shall include coverage as specified in subsections (a) and (b).

(2) The insurance policy shall be issued by an insurer having a certificate of authority and a licensed agent authorized to transact the business of insurance in this Commonwealth by the Insurance Department. Insurance may be provided by an excess or surplus lines insurer approved by the Insurance Department.

(3) The full policy amount shall be applicable to each driver and vehicle authorized to operate under the license. There may be no proration of the policy amount of coverage among vehicles.

(4) The insurance policy shall provide that the insurer shall notify the Department by certified mail within 30 days whenever a substantive change is made in the policy, including policy amounts, scope of coverage, tail period, claims procedures, definitions of occurrences or claims or other provisions related to the requirements of this subchapter.

(d) The licensee shall maintain the insurance required by this section in full force and effect during the term of the license and renewals thereof.

(e) An applicant for a transporter license to transport infectious or chemotherapeutic waste which is a department or an agency of the United States or of the Commonwealth may fulfill the requirements under this section by means of one or more of the following:

(1) Commercial insurance as specified in this section.

(2) Self-insurance allowed by Federal or State law.

(3) Additional means approved by the Department.

(f) The amount of liability coverage for departments or agencies of the Commonwealth may not exceed the liability limits of 42 Pa.C.S. Chapter 85 (relating to matters affecting government units).

LICENSE APPLICATION REVIEW

§ 284.621. Criteria for license issuance or denial.

(a) A license application will not be approved unless the applicant affirmatively demonstrates to the Department's satisfaction that the following conditions are met:

(1) The license application is complete and accurate.

(2) The requirements of the act, the environmental protection acts and this title have been complied with.

(3) The compliance status of the applicant or a related party under section 503(c) and (d) of the act (35 P.S. § 6018.503(c) and (d)) does not require or allow license denial.

(b) The Department will deny a license application if the applicant fails to provide the Department with a bond consistent with this subchapter or fails to provide other required information within 120 days after the Department's written request.

§ 284.622. Term of license.

A license granted or renewed under this subchapter is valid for 2 years unless the Department determines that circumstances justify issuing a license for less than 2 years. The expiration date will be set forth in the license.

§ 284.623. Conditions of licenses.

(a) The Department may place terms and conditions upon a license it deems necessary to protect public health, public safety and the environment, and to ensure compliance with the act, the environmental protection acts and this title.

(b) Except to the extent that the license states otherwise, the licensee shall conduct transportation activities as described in the approved application.

(c) A license to transport infectious and chemotherapeutic waste is nontransferable and nonassignable. A license applies to the licensee and its employees. Leased or subcontracted drivers, and drivers who provide equipment, have no authority to operate under the licensee's license without prior written approval from the Department.

§ 284.624. License renewal.

A licensee that plans to transport infectious or chemotherapeutic waste after expiration of the current license term under § 284.622 (relating to term of license) shall file a complete application for license renewal on forms provided by the Department at least 90 days before the expiration date of the license. The application shall include a nonrefundable application fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$500. The license renewal application will be reviewed by the Department in the same manner as a new application for a license under this subchapter.

§ 284.625. Public notice.

The Department will publish notice in the *Pennsylvania Bulletin* of the following:

(1) Receipt of an application for a license under this subchapter.

(2) Approval or denial of a license application under this subchapter.

OPERATIONAL REQUIREMENTS

§ 284.631. Basic limitations.

(a) A person or municipality subject to this subchapter that transports infectious or chemotherapeutic waste shall comply with the following:

(1) The act, this article and other applicable regulations promulgated under the act, including Subchapter F (relating to collection and transportation).

(2) The terms and conditions of the license, the environmental protection acts, this title and orders issued by the Department.

(b) A transporter shall allow authorized representatives of the Commonwealth, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access to areas in which operations will be, are being or have been conducted.

§ 284.632. Infectious or chemotherapeutic waste discharges or spills.

(a) A copy of the most recently approved Transporter Contingency Plan (TCP) shall be carried on each transport vehicle at all times. Information in the TCP shall be kept current.

(b) In the event of a discharge or spill of infectious or chemotherapeutic waste during transportation, the transporter shall take appropriate immediate action to protect the health and safety of the public and the environment, in accordance with its approved TCP. The transporter shall also immediately telephone the Department and the affected municipality, and provide the following information:

(1) The name of the person reporting the spill or discharge.

(2) The transporter's name, address, the Department-issued infectious and chemotherapeutic waste transporter license number and identification number.

(3) The telephone number where the person reporting the spill or discharge can be reached.

(4) The date, time and location of the spill or discharge.

(5) The mode of transportation and type of transport vehicle.

(6) A brief description of the accident.

(7) For each waste involved in the spill:

(i) The name and identification number of the generators of the waste.

(ii) The estimated quantity of the waste spilled.

(c) If a discharge or spill of infectious or chemotherapeutic waste occurs during transportation, and if the immediate removal of the waste is necessary to protect public health and safety or the environment, the Department may authorize the removal of the waste to a selected receiving facility by transporters who do not have identification numbers, licenses or manifests under this subchapter.

(d) A transporter shall:

(1) Clean up an infectious or chemotherapeutic waste discharge or spill that occurs during transportation or take action that may be required or approved by the Department so that the discharge or spill no longer presents a hazard to public health, public safety or the environment.

(2) File a complete report in writing concerning the incident with the Department's central office. The report shall include, at a minimum, a detailed description of the clean-up operation and the disposition of the waste, and the information required by subsection (a).

§ 284.633. Safety.

A transporter of infectious or chemotherapeutic waste shall provide adequate personnel training to ensure transport activities are conducted safely, in compliance with applicable laws and regulations, and according to the contingency plan approved under § 284.632 (relating to infectious or chemotherapeutic waste discharges or spills).

§ 284.634. Annual report.

(a) A transporter shall submit to the Department's Central Office an annual report. The report shall be

submitted by the end of March of each calendar year. The report shall be submitted on forms supplied by the Department.

(b) The annual report shall be based on the shipments of infectious or chemotherapeutic waste during the previous calendar year, and shall include the following:

(1) The name, location, telephone number and permit identification number of each processing or disposal facility to which the transporter delivered infectious or chemotherapeutic waste.

(2) The weight or volume of each type of infectious or chemotherapeutic waste transported.

(3) When more than one transporter is used to transport a single shipment of infectious or chemotherapeutic waste from the generator to the processing or disposal facility, only the first transporter shall be required to submit information for that shipment on the annual report.

BOND

§ 284.641. Bond requirement.

(a) *General.* The applicant shall provide the Department a bond, secured by collateral as specified by this section and which bond is conditional upon compliance by the licensee with the requirements of the act, the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6), referred to as the Infectious and Chemotherapeutic Waste Law, regulations thereunder, the terms and conditions of the license and Department orders issued to the licensee. The bond shall be consistent with, and subject to, the requirements of this section. The amount, duration, form, conditions and terms of the bond shall be specified by the Department. An additional bond amount will not be required of applicants that are also licensed hazardous waste transporters during the term of license or renewal thereof under this subchapter if the applicant or licensee submits a bond endorsement, including an increase in the amount of the bond of a minimum of \$10,000, to the Department that includes liability for infectious and chemotherapeutic waste transportation on the hazardous waste transporter bond.

(b) *Approval by Department.* A license to transport infectious or chemotherapeutic waste will not be issued by the Department before the applicant for the license has filed a collateral bond payable to the Department on a form provided by the Department, and the bond has been approved by the Department.

(c) *Amount of bond.*

(1) The bond shall be in an amount sufficient to assure that the licensee faithfully performs the requirements of the act, the Infectious and Chemotherapeutic Waste Law and regulations thereunder, the terms and conditions of the license, and Department orders issued to the licensee. The minimum amount of the bond is \$10,000.

(2) The Department may require additional bond amounts if the mode of transporting waste changes, or the Department determines additional bond amounts are necessary to meet the requirements described in paragraph (1).

(d) *Term of bond.* Liability under the bond shall contain at a minimum for the duration of the license, any renewals thereof and for 1 year after expiration, termination, revocation or surrender of the license. The 1-year extended period of liability includes, and shall be automatically extended for, an additional time period during which administrative or legal proceedings are pending

involving a violation by the transporter of the act, the Infectious and Chemotherapeutic Waste Law, regulations thereunder, the terms and conditions of the license or Department orders issued to the licensee.

(e) *Collateral for transporter bonds.*

(1) The Department will accept the types of collateral for transporter bonds that are provided in § 271.322 (relating to general terms and conditions for collateral bonds).

(2) The terms and conditions for the bonds shall be as provided in §§ 271.322—271.325.

(3) A department or agency of the United States or the Commonwealth applying for a transporter license to transport infectious or chemotherapeutic waste shall satisfy the requirements of this section by filing a bond with the Department under this section, or by another means of financial assurance approved by the Department which satisfies the terms and conditions for bonds under § 271.313(b) (relating to forms, terms and conditions of the bond or trust). The Department may accept a bond executed by a transporter who is not the licensee, in lieu of a bond executed by the licensee, if the liability on the bond meets the requirements of this subchapter. The transporter may not accept waste or initiate operation prior to the approval by the Department of the financial assurances required by this section.

(f) Bonds will be reviewed for legality and form according to established Department procedures.

§ 284.642. Release of bond.

(a) Except as provided in subsection (b), the Department will release a transporter bond 1 year after the expiration or termination of a license upon written request of the licensee.

(b) The Department will not release a bond if the transporter is in violation of the act, the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6), known as the Infectious and Chemotherapeutic Waste Law, regulations thereunder, the terms and conditions of the license or Department orders issued to the licensee, whether or not the violation results from infectious or chemotherapeutic waste transportation.

(c) The release of a bond by the Department does not constitute a waiver or release of other liability provided in law, nor does it abridge or alter rights of action or remedies of a person or municipality presently or prospectively existing in equity or under criminal and civil common or statutory law.

§ 284.643. Bond forfeiture.

(a) The Department will declare a bond forfeit if the transporter is in violation of the act, the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6), known as the Infectious and Chemotherapeutic Waste Law, regulations thereunder, the terms and conditions of the bond, the terms and conditions of the license or Department orders issued to the licensee, whether or not the violation results from infectious or chemotherapeutic waste transportation.

(b) If the Department declares a bond forfeit, it will:

(1) Send written notification to the transporter of the Department's determination to declare the bond forfeit and the reasons for the forfeiture.

(2) Advise the transporter and surety of the right to appeal to the EHB under the Environmental Hearing Board Act (35 P. S. §§ 7511—7514).

(3) Proceed to collect on the bond as provided by applicable laws for the collection of defaulted bonds or other debts.

(c) If the Department declares a transporter bond forfeited, it will pay, or direct the State Treasurer to pay, the collateral funds into the Solid Waste Abatement Fund. If upon proper demand and presentation, the banking institution or other person or municipality which issued the collateral refuses to pay the Department the proceeds of a collateral undertaking, the Department will take appropriate steps to collect the proceeds.

§ 284.644. Replacement of existing bond.

(a) The Department may allow a transporter to replace an existing collateral bond with another collateral bond, if the liability which has accrued under the bond and against the transporter is incorporated into the replacement bond. The bond amount for this replacement bond will be determined under this subchapter, but may not be less than the amount of the existing bond.

(b) The Department will not release existing bonds until the transporter has submitted and the Department has approved acceptable replacement bonds. A replacement of bonds under this section does not constitute a release of bond under § 284.642 (relating to release of bond).

§ 284.645. Preservation of remedies.

Remedies provided or authorized by law for violation of statutes, including, but not limited to, the act, the applicable environmental protection acts, this title and the terms and conditions of permits or licenses, and orders of the Department, are expressly preserved. Nothing in this subchapter is an exclusive penalty or remedy for the violations. No action taken under this subchapter waives or impairs another remedy or penalty provided in law or equity.

Subchapter H. MANIFESTING FOR INFECTIOUS AND CHEMOTHERAPEUTIC WASTE

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GENERAL

§ 284.701. Scope.

(a) Except as provided in subsections (b) and (c), this subchapter applies to a person or municipality that generates, transports, disposes or processes infectious or chemotherapeutic waste or processed infectious or chemotherapeutic waste that is recognizable.

(b) This subchapter does not apply to a person or municipality for the following activities:

(1) Onsite movement of infectious or chemotherapeutic waste by generators.

(2) Onsite movement of infectious or chemotherapeutic waste by owners or operators of permitted infectious or chemotherapeutic waste management facilities.

(3) Transportation by a generator who generates less than 220 pounds per month of infectious and chemotherapeutic waste if the following are met:

(i) The generator only transports his own waste.

(ii) The generator records on a log or shipping paper the following information for each shipment:

(A) The name, address and telephone number of the generator of the waste.

(B) The quantity of the waste transported and accepted by the processing or disposal facility.

(C) The date the waste is transported and accepted by the processing or disposal facility.

(iii) The generator carries and delivers a copy of this record with the waste shipment to the offsite processing or disposal facility.

(4) The transportation of used sharps from generators who generate less than 220 pounds per month of infectious and chemotherapeutic waste if the following are met:

(i) The package is sent to a permitted processing or disposal facility in this Commonwealth or to an out-of-State facility by certified mail, return receipt requested, indicating the name and address of the sender, the name of the addressee, the signature of the addressee, the date of delivery and the address where delivered or by utilizing an alternate tracking system approved in writing by the Department if applicable.

(ii) The packaging meets the requirements of the United States Postal Service or other mail carriers.

(iii) The generator maintains a log containing the following information:

(A) The weight of the waste transported.

(B) The date of shipment.

(C) The name and address of each processing or disposal facility to which the generator is shipping the waste by the United States Postal Service or other mail carrier.

(5) The transportation by a generator of less than 220 pounds per month of infectious or chemotherapeutic waste that he generates and processes onsite, but which is recognizable waste, if the following are met:

(i) The generator records on a log or shipping paper the following information for each shipment:

(A) The name, address and telephone number of the generator of the waste.

(B) The quantity of the waste transported and accepted by the disposal facility.

(C) The name, address and telephone number of the transporter for each shipment of waste. If applicable, the log or shipping paper shall include the identification number of a licensed transporter.

(D) The date the waste is transported and accepted by the processing or disposal facility.

(ii) A copy of the log or record shall be carried and delivered to the disposal facility by the transporter for each shipment of waste.

(6) The transportation through this Commonwealth of infectious or chemotherapeutic waste generated outside this Commonwealth and which is destined for processing or disposal outside this Commonwealth.

(7) The transportation of processed infectious or chemotherapeutic waste to a disposal facility if the waste has been rendered unrecognizable.

(c) This subchapter does not apply to a person or municipality which receives infectious or chemotherapeutic waste generated in this Commonwealth and which processes or disposes of the waste outside this Commonwealth in a state that provides a manifest or tracking form if the following are met:

(1) The state requires a manifest or tracking form for infectious or chemotherapeutic waste, regardless of whether the state requires a manifest or tracking form for infectious or chemotherapeutic waste as defined in this article.

(2) The generator obtains a manifest or tracking form for infectious or chemotherapeutic waste from that state.

(3) The generator, transporter and owner or operator of a processing or disposal facility comply with the requirements on the manifest or tracking form and applicable state or Federal law, managing the infectious or chemotherapeutic waste as if it were regulated waste under applicable law. For purposes of this subsection, applicable law includes the provisions of this subchapter that are expressly applicable to waste that will be transported outside this Commonwealth for processing or disposal.

§ 284.702. Transfer facilities.

(a) Infectious or chemotherapeutic waste or processed infectious or chemotherapeutic waste that is recognizable may be transported to or from a transfer facility under this subchapter. The use of a transfer facility shall require two manifests, one for the transportation of waste to the facility, and one for the transportation of waste from the facility.

(b) If infectious or chemotherapeutic waste or processed waste which is recognizable is transported to a transfer facility, the transfer facility shall be considered the designated facility for purposes of this subchapter. When the waste is transported from the transfer facility to a processing or disposal facility, the transfer facility shall be considered the generator and the processing or disposal facility shall be considered the new designated facility for purposes of this subchapter.

§ 284.703. Recordkeeping.

(a) The records required under this subchapter shall be retained for at least 5 years from the date on which the report was required to be prepared. The retention period shall be extended automatically during the course of an enforcement action or as requested by the Department.

(b) Manifest copies shall be retained for at least 5 years from the date of shipment of the waste. Manifest copies retained under this subchapter shall be furnished to the Department upon request. The retention period shall be extended automatically during the course of an enforcement action or as requested by the Department.

GENERATOR RESPONSIBILITIES

§ 284.711. Use of manifest.

(a) A generator who transports, or offers for transportation, infectious or chemotherapeutic waste for offsite processing or disposal shall ensure proper segregation of infectious and chemotherapeutic waste from other types

of waste and prepare a manifest according to the instructions supplied with the manifest. A processor who transports, or offers for transportation, processed infectious or chemotherapeutic waste that is recognizable for offsite disposal shall be considered a generator for purposes of manifesting. The manifest shall be in at least four parts.

(b) If the waste is to be processed or disposed in this Commonwealth, the generator shall use one of the manifest formats prescribed by the Department.

(c) The manifest copies shall be distributed as follows:

(1) A four-part manifest shall be used by a generator who designates only one transporter.

(i) Copy 4 of the manifest is retained by the generator.

(ii) Copy 3 of the manifest is retained by the transporter.

(iii) Copy 2 of the manifest is retained by the owner or operator of the processing or disposal facility.

(iv) Copy 1 of the manifest is mailed to the generator by the owner or operator of the processing or disposal facility.

(2) A five-part manifest shall be used by a generator who designates two transporters.

(i) Copy 4 of the manifest is retained by the generator.

(ii) Copy 3A of the manifest is retained by the first transporter.

(iii) Copy 3 of the manifest is retained by the second transporter.

(iv) Copy 2 of the manifest is retained by the owner or operator of the processing or disposal facility.

(v) Copy 1 of the manifest is mailed to the generator by the owner or operator of the processing or disposal facility.

(3) A six-part manifest shall be used by a generator who designates three transporters.

(i) Copy 4 of the manifest is retained by the generator.

(ii) Copy 3B of the manifest is retained by the first transporter.

(iii) Copy 3A of the manifest is retained by the second transporter.

(iv) Copy 3 of the manifest is retained by the third transporter.

(v) Copy 2 of the manifest is retained by the owner or operator of the processing or disposal facility.

(vi) Copy 1 of the manifest is mailed to the generator by the owner or operator of the processing or disposal facility.

(d) If the waste is to be processed or disposed outside this Commonwealth, the generator shall obtain the manifest from the destination state. If the destination state does not supply the manifest, the generator shall use the manifest format required by the Department.

§ 284.712. Preparation of manifest.

(a) The generator shall provide the following information on each manifest before the offsite transportation of the manifested waste occurs:

(1) The name, mailing address and telephone number of the generator.

(2) The total number of pages used to complete the manifest, counting the first page plus the number of continuation sheets, if any.

(3) Each transporter's company name, identification number, Pennsylvania infectious and chemotherapeutic waste transporter license number and telephone number. If three transporters are designated by the generator, enter the third transporter's name, identification number, Pennsylvania infectious and chemotherapeutic waste transporter license number, telephone number and the words "Transporter 3 sign here," in the Special Handling Instruction Section.

(4) The number of containers, types of containers and the total quantity of the waste by weight or volume.

(5) The infectious or chemotherapeutic waste code number for each waste as indicated on the manifest instructions.

(6) The United States Department of Transportation proper shipping name, hazard class and identification number (UN or NA) for each waste identified by 49 CFR Subchapter C (relating to hazardous materials regulations), if applicable.

(7) Special instructions and information necessary for proper handling of the waste during transportation, processing, storage or disposal, if any.

(8) The printed or typed name and handwritten signature of the generator's authorized representative, and the date of shipment.

(9) The printed or typed name and handwritten signature of the initial transporter's authorized representative, and the date of receipt.

(10) The designated facility's name, site address, Pennsylvania State permit or identification number and phone number. One alternate facility's name, site address, Pennsylvania State permit or identification number and phone number may be designated on the manifest to receive the waste. A facility may only be designated if it has been approved by the Department to accept the generator's waste.

(b) An authorized representative of the generator shall ensure that the manifest has been completed and shall read the certification statement on the manifest prior to signing the manifest.

(c) The generator shall ensure before the waste is transported offsite that the required information on all parts of the manifest are capable of being read.

(d) When the generator uses lab packs containing more than four different waste streams, the generator shall complete a continuation sheet (EPA Form 8700-22A).

(e) For a shipment containing more than four different waste streams, which is not a lab pack, the generator shall complete additional manifests as necessary for waste streams in excess of four, according to the instructions on the manifest.

§ 284.713. Generator's distribution of copies.

(a) Except as provided in subsection (b), the generator shall detach and retain copy 4 of the manifest.

(b) A generator located in this Commonwealth and designating a facility in a state that supplies the manifest shall provide information and distribute copies as required by the manifest in accordance with instructions supplied with the manifest and retain one copy of the manifest.

(c) The generator shall give the transporter the remaining copies of the manifest before the transporter leaves the generator's property.

§ 284.714. Exception reporting.

(a) A generator that does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated processing or disposal facility within 20 days of the date the generator's waste was accepted by the initial transporter shall:

(1) Contact the transporter or the owner or operator of the designated facility, or both, to determine the status of the infectious or chemotherapeutic waste or processed recognizable waste shipment.

(2) Notify the Department's appropriate regional office by telephone within 1 business day of the status of the shipment.

(b) A generator shall notify by telephone the Department's appropriate regional office and submit an exception report to the Department's central office if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated processing or disposal facility within 35 days of the date the generator's waste was accepted by the initial transporter.

(c) The exception report shall include the following:

(1) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(2) A cover letter signed by the generator or an authorized representative explaining the efforts taken to locate the waste shipment and the results of those efforts.

TRANSPORTER RESPONSIBILITIES

§ 284.721. Basic requirements.

Except as provided in § 284.701 (relating to scope), a transporter may not accept infectious or chemotherapeutic waste or processed infectious or chemotherapeutic waste that is recognizable unless it is accompanied by a manifest which has been completed and signed by the generator or the generator's authorized agent under § 284.712 (relating to preparation of manifest).

§ 284.722. Preparation and use of manifest.

(a) Before transporting infectious or chemotherapeutic waste or processed infectious or chemotherapeutic waste that is recognizable, the transporter shall print or type his name, sign and date the manifest, and, by the signature, acknowledge acceptance of the waste from the generator.

(b) Before leaving the generator's property, the transporter shall ensure that all copies of the manifest are properly completed and capable of being read, and shall return copy 4 of the manifest to the generator according to the instructions on the manifest.

(c) The transporter shall ensure that the manifest accompanies the waste shipment.

(d) The transporter may not add additional information to the generator's or designated facility's portions of the manifest or alter the generator's information on a manifest as it existed when the generator signed the manifest.

(e) A transporter who delivers infectious or chemotherapeutic waste or processed recognizable waste to the designated processing or disposal facility shall:

(1) Obtain on the manifest the date of delivery, the printed or typed name and handwritten signature of the owner or operator of the designated facility.

(2) Retain copy 3 of the manifest according to the instructions supplied with the manifest.

(3) Give the remaining copies of the manifest to the owner or operator of the designated facility.

(f) The transporter who delivers infectious or chemotherapeutic waste to another transporter shall:

(1) Obtain the following information on the original manifest and on an additional copy of the manifest provided by the generator:

(i) The date of delivery to the subsequent transporter.

(ii) The printed or typed name of the subsequent transporter and his handwritten signature.

(2) Retain the additional copy signed by the subsequent transporter.

(3) Give the remaining additional copies of the manifest to the subsequent transporter.

§ 284.723. Waste delivery.

(a) The transporter shall deliver the entire quantity of infectious or chemotherapeutic waste or processed infectious or chemotherapeutic waste that is recognizable which he has accepted from a generator, a processor or a transporter to one of the following:

(1) The designated facility listed on the manifest by the generator.

(2) The next designated transporter listed on the manifest by the generator.

(b) If the waste cannot be delivered in accordance with subsection (a), the transporter shall do one of the following:

(1) Return the waste to the generator.

(2) Deliver the waste to the alternate facility designated by the generator on the original manifest.

(3) Receive from the generator another properly completed manifest designating an alternate facility from the originally designated facility before transporting the waste to the alternate facility.

§ 284.724. Transportation limitations.

(a) A transporter may not accept or transport a shipment of infectious or chemotherapeutic waste or processed infectious or chemotherapeutic waste that is recognizable if:

(1) The waste is in containers or packaging which appear to be leaking, damaged or otherwise in violation of § 284.415 or § 284.512 (relating to storage containers; and transportation of infectious and chemotherapeutic waste; general provisions).

(2) The waste is not labeled or identified as required by § 284.416 (relating to marking of containers).

(3) The number and type of containers and quantity of waste to be transported do not correspond with the number and type of containers and quantity of waste stated on the manifest.

(4) Any copy of the manifest is not completed according to the manifest instructions or if information on copies of the manifest is not capable of being read.

(b) A transporter shall ensure that the waste shipment complies with applicable United States Department of

Transportation regulations and 67 Pa. Code Part I (relating to Department of Transportation).

FACILITY RESPONSIBILITIES

§ 284.731. Scope.

Sections 284.732—284.734 (relating to use of manifest; distribution of copies; and significant discrepancies) apply to owners and operators of waste processing or disposal facilities that receive infectious or chemotherapeutic waste or processed infectious or chemotherapeutic waste that is recognizable from offsite sources.

§ 284.732. Use of manifest.

(a) Except for waste managed in accordance with § 284.701 (relating to scope), an owner or operator of a designated facility may not accept shipments of infectious or chemotherapeutic waste or processed infectious or chemotherapeutic waste that is recognizable from offsite sources unless the shipment is accompanied by a Pennsylvania manifest in accordance with this subchapter.

(b) The owner or operator of the designated facility shall:

(1) Print or type his name, and sign and date each copy of the manifest to certify that the waste covered by the manifest was received.

(2) Note significant discrepancies in the information on the manifest, as defined in § 284.734 (relating to significant discrepancies).

(3) Note the rejection in the discrepancy indication space, and sign and date the manifest in accordance with paragraph (1) if either partially or totally rejecting the waste.

(c) The owner or operator of the designated facility may not alter or add to the information in the generator or transporter sections of the manifest form.

(d) The owner or operator of the designated facility shall ensure that information entered on the manifest is capable of being read on all copies of the manifest.

§ 284.733. Distribution of copies.

The owner or operator of a designated facility or an authorized representative shall:

(1) Immediately upon signing the manifest to either partially or totally accept or reject the waste shipment, give the transporter copy 3 of the signed manifest.

(2) Retain copy 2 of the manifest for his records.

(3) Send copy 1 of the manifest to the generator within 14 days of the date of receipt of the waste.

§ 284.734. Significant discrepancies.

(a) This section applies if there is a significant discrepancy in a manifest. A discrepancy is a difference between the quantity or type of waste designated on the manifest, and the quantity or type of waste a facility actually receives. A significant discrepancy occurs if one or more of the following apply:

(1) There is a variation greater than 5% in weight, for bulk waste.

(2) There is a variation in piece count, for batch waste.

(3) There is a difference in waste type which can be discovered by inspection or waste analysis.

(b) If there is a significant discrepancy in a manifest, the owner or operator shall attempt to reconcile the discrepancy before the waste is processed or disposed at the facility or before the waste is accepted at a transfer

facility. If the discrepancy is not resolved within 3 days of receipt of the waste, the owner or operator shall immediately notify the appropriate regional office of the Department by telephone. Within 7 days of receipt of the waste, the owner or operator shall also send a letter to the regional office describing the discrepancy and attempts to reconcile it, and include a legible copy of the relevant manifest.

CHAPTER 285. STORAGE, COLLECTION AND TRANSPORTATION OF MUNICIPAL WASTE

Subchapter A. STORAGE OF MUNICIPAL WASTE SCOPE

§ 285.101. Scope.

(a) A person or municipality that stores municipal waste shall comply with §§ 285.111—285.117 (relating to general).

(b) In addition to the requirements of subsection (a):

(1) A person or municipality that stores municipal waste in the manner identified in §§ 285.121—285.124 (relating to types of storage) shall store the waste under the applicable provisions of those sections.

(2) A person or municipality that stores the type of municipal waste referred to in §§ 285.131—285.134 (relating to additional requirements for certain types of waste) shall store the waste under the applicable provisions of those sections.

GENERAL

§ 285.111. General requirements.

A person or municipality that stores municipal waste may not do the following:

(1) Mix the waste with hazardous waste that is regulated under Article VII (relating to hazardous waste management).

(2) Mix the waste with, or store the waste in close proximity to, other solid waste to create a risk of fire or explosion, or a risk of the accumulation of poisonous or otherwise harmful vapors or gases.

(3) Mix the waste with special handling waste.

(4) Allow waste or constituents of waste to be blown or otherwise deposited outside of the storage area.

§ 285.112. Design and operation.

(a) A person or municipality storing municipal waste shall employ best engineering design and construction practices for all phases of construction and operation.

(b) A person or municipality may not store municipal waste in a manner that exceeds the design capacity of the storage facility.

(c) The Department may require a person or municipality to install a water quality monitoring system in accordance with §§ 273.281—273.285 if storage of the waste has the potential to cause groundwater degradation. In all cases, a groundwater monitoring system is required for sewage sludge storage impoundments constructed after January 25, 1997, and leachate storage impoundments under § 285.123 (relating to impoundments—general).

(d) A person or municipality storing municipal waste shall routinely inspect the facility, its equipment and the surrounding area for evidence of failure and shall immediately take necessary corrective actions. The person or municipality shall maintain records of inspections and

corrective actions that were taken, and shall make the records available to the Department upon request.

(e) A person or municipality may not store putrescible waste in piles, except for sewage sludge that has been stabilized, dried to 20% or greater solids content by weight, and stored under this chapter.

§ 285.115. Nuisance minimization and control.

(a) A person or municipality that stores municipal waste shall:

(1) Eliminate conditions conducive to the harborage, breeding or attraction of vectors.

(2) Take other measures necessary to minimize and control the presence of vectors.

(3) If vectors are present, immediately take measures necessary to exterminate them.

(b) A person or municipality storing municipal waste shall also minimize and control conditions not otherwise prohibited by this subchapter that are harmful to the public health, public safety or the environment, or which create safety hazards, odors, dust, unsightliness or other public nuisances.

§ 285.116. Surface and groundwater protection.

(a) Surface water runoff from storage areas shall be minimized. Collection of surface water runoff shall be managed in accordance with The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the regulations promulgated thereunder.

(b) Surface water run-on to storage areas shall be minimized.

(c) Waste may not be stored in a manner that causes groundwater degradation.

§ 285.117. Emergency storage.

Notwithstanding a provision of this article or term or condition of a permit for a solid waste processing or disposal facility, the Department may allow the storage of municipal waste at a permitted facility if the following conditions are met:

(1) The waste was created, spilled or released during or as a result of an emergency. The waste may also be created as a result of adverse effects on groundwater from a solid waste management facility, materials storage tank or similar source.

(2) The permitted facility includes the following:

(i) A designated waste storage area.

(ii) An approved storage and handling plan that will allow storage of the waste without any adverse effect on public health, safety, welfare or the environment.

(iii) Plans for prompt removal of the waste and disposal or processing at another permitted facility if the Department denies the application for permit modification under paragraph (3).

(3) Within 5 working days after storage begins, the Department has received an application for permit modification under § 271.222 (relating to permit modification) to allow the disposal or processing of the waste at the facility.

TYPES OF STORAGE

§ 285.121. Containers.

(a) A person or municipality storing municipal waste shall provide a sufficient number of containers to prevent

leaks, odors and vector attraction and to contain solid waste generated during periods between regularly scheduled collections.

(b) An individual container or bulk container used for the storage of municipal waste shall have the following characteristics:

(1) The container shall be constructed to be easily handled for collection.

(2) The container shall be constructed of rust resistant and corrosion resistant materials.

(3) The container shall be equipped with a tight fitting lid or cover, or otherwise sealed.

(4) The container shall be watertight, leak proof, insect proof and rodent proof.

(5) The container shall be clearly labeled as "municipal waste" or a specific type of municipal waste.

(c) A person or municipality that stores municipal waste outside of containers shall tie the wastes securely in bundles of a size that can be readily handled for collection, and in a manner that minimizes litter, safety hazards and fire hazards.

§ 285.124. Impoundments—failure.

(a) If a surface impoundment fails, the person or municipality storing municipal waste shall immediately:

(1) Stop adding waste to the impoundment.

(2) Contain a discharge that has occurred or is occurring.

(3) Empty the impoundment in a manner approved by the Department if leaks cannot be stopped.

(4) Notify the Department of the failure of the impoundment and the measures taken to remedy the failure.

(b) A surface impoundment that has been removed from service due to failure may not be restored to service unless the following requirements are met:

(1) The impoundment has been repaired.

(2) The repair has been certified to the Department, in writing, by a registered professional engineer.

(3) The Department has approved, in writing, the restoration of the impoundment to service.

(c) If a storage impoundment fails and the impoundment or surrounding area cannot be cleaned up in a manner that will protect public health, safety and the environment and that is satisfactory to the Department, the operator shall submit a closure plan to the Department that meets one of the following and, upon Department approval, implement the closure plan:

(1) *Removal of waste.*

(i) The closure plan provides for removal of the waste and structures or other materials which contain or are contaminated with solid waste.

(ii) The closure plan provides for the processing or disposal of the waste and material under the environmental protection acts and this title.

(iii) If required by the Department, the closure plan includes a soil and groundwater monitoring plan to assess the impact of the failure on groundwater consistent with § 273.286 (relating to assessment plan).

(iv) If the groundwater assessment shows the presence of groundwater degradation at one of the monitoring wells, the operator shall comply with § 273.287 (relating to abatement plan).

(2) *Waste remaining in place.* If the closure plan provides for leaving the waste in place, the operator shall comply with § 271.113 (relating to closure plan).

ADDITIONAL REQUIREMENTS FOR CERTAIN TYPES OF WASTE

§ 285.132. (Reserved)

ADDITIONAL REQUIREMENTS FOR INFECTIOUS/CHEMOTHERAPEUTIC WASTE

§ 285.142—285.148. (Reserved)

Subchapter B. COLLECTION AND TRANSPORTATION OF MUNICIPAL WASTE SCOPE

§ 285.201. Scope.

A person or municipality that collects or transports municipal waste shall comply with §§ 285.211—285.219 (relating to general provisions). A person or municipality that transports the types of municipal waste referred to in §§ 284.512, 285.221 and 285.225 (relating to transportation of ash residue from municipal waste incineration and from infectious or chemotherapeutic waste incinerations; transportation of infectious and chemotherapeutic waste; general provisions and transportation of residential septage) shall transport the waste under the applicable provisions of those sections.

GENERAL PROVISIONS

§ 285.211. General requirements.

(a) Municipal waste, including ash residue from municipal waste incineration and infectious or chemotherapeutic waste incineration, shall be completely covered during transportation and parking with a cover that meets the following requirements. The cover shall:

(1) Be water resistant.

(2) Be securely fastened.

(3) Eliminate the potential for roadside littering, dust, leakage, discharge, attraction or harboring of vectors, or other nuisances.

(b) A person or municipality that collects or transports municipal waste may not mix the waste with:

(1) Hazardous waste regulated under Article VII (relating to hazardous waste management).

(2) Other solid waste to create a risk of fire or explosions, or a risk of the accumulation of poisonous or otherwise harmful vapors or gases.

(3) Special handling waste.

(c) A person or municipality that collects or transports source separated recyclable materials may not combine waste with the source separated recyclable materials in the collection or transportation vehicle.

§ 285.212. Collection and transportation.

(a) A person or municipality that is responsible for the collection of municipal waste shall make collection services available with sufficient frequency to prevent a nuisance or hazard to public health, safety or welfare.

(b) A person or municipality that generates municipal waste shall schedule collection of waste with sufficient frequency to prevent a nuisance.

(c) A person or municipality may not park a municipal waste collection or transportation vehicle to cause a nuisance or a hazard to public health, safety and welfare. A person or municipality may not allow a municipal waste collection or transportation vehicle to remain in a residential area for more than 4 hours.

§ 285.214. Transportation equipment cleaning areas and securing loads in vehicles.

(a) Transportation equipment cleaning areas shall meet the following requirements:

(1) Drainage from equipment cleaning areas shall be managed to prevent surface water pollution or groundwater pollution.

(2) Drainage shall be discharged to a sanitary sewer system or other treatment facility.

(3) The surface of the equipment cleaning area shall be constructed of impervious material that can be easily cleaned and is well drained.

(4) Windborne drift of steam or atomized water shall be controlled.

(b) Loads in vehicles shall be secured in the following manner:

(1) *Load of loose garbage.* Every load of loose nonbaled municipal waste being transported through or within this Commonwealth shall be transported in a vehicle with four solid sides and with a cover or top of a type to prevent any of the load from escaping. The cover or top shall remain tightly in place going to a disposal site. The load shall be no higher than the solid sides of the vehicle. It is imperative that municipal waste be removed from the vehicle at the disposal site to prevent scattering of litter on the highway during the return trip. A truck, trailer or semitrailer with an open body or stake body may not be used for these purposes. This subsection does not apply to vehicles engaged in the systematic collection of garbage or refuse and which are designed to be open in the rear for the loading of municipal waste.

(2) *Load of baled garbage.* Municipal waste in a tightly compacted and baled form being transported through or within this Commonwealth shall be securely fastened to the vehicle and covered over exposed areas with a canvas cover or cover of a comparable type which shall be securely attached to the under sides of the sides of the truck, trailer or semitrailer to prevent material from the bales from escaping. No part of a bale may be uncovered, except for inspection, during transportation within or through this Commonwealth until arrival at the disposal site.

§ 285.216. Wastes from accidents and spills.

(a) A person or municipality that generates or discharges municipal waste or other material as a result of an accident, spill or emergency shall notify the Department prior to the disposal of the waste.

(b) The Department may immediately approve emergency storage, transportation, processing or disposal methods necessary to mitigate harm to the public health, safety or the environment. Storage may be at the site of emergency at a permitted processing or disposal facility under § 285.117 (relating to emergency storage) or at a site approved by the Department.

(c) Compliance with this section does not relieve a person from liability, either criminal or civil, under the act, the environmental protection acts or this title.

§ 285.217. Recordkeeping and reporting.

(a) *General.* A person or municipality that collects or transports municipal waste other than infectious and chemotherapeutic waste shall make and maintain an operational record each day that municipal waste is collected or transported, or both. The daily operational record shall be kept in the cab of each transportation vehicle on the date of collection or transportation. The record shall include the following:

(1) The county and state where the waste was originally collected.

(2) The name, mailing address and telephone number of the person or municipality collecting or transporting the waste.

(3) The name and location of a transfer facility that has received, or will receive, the waste.

(4) The name and location of the solid waste processing or disposal facility where the waste will be ultimately disposed or processed.

(5) The weight or volume of the types of municipal waste transported.

(6) A description of handling problems or emergency disposal activities.

(b) The records required in subsection (a) shall be made available to the Department upon request and shall be retained for at least 5 years.

§ 285.219. Transporting foodstuffs and feedstuffs in vehicles used to transport waste.

(a) A person or municipality may not transport, or knowingly provide a vehicle for the transportation of, a food product or produce intended for human or livestock consumption, in a vehicle which has been used to transport municipal, residual or hazardous waste, or, chemical or liquid, in bulk, which is not a food product or produce.

(b) A person or municipality may not knowingly accept a food product or produce from, or provide a food product or produce to, a vehicle used to transport municipal, residual or hazardous waste, or, chemical or liquid, in bulk, which is not a food product or produce.

(c) As used in this section, the following words and phrases have the following meaning:

(1) *Food product or produce*—A raw, cooked or processed edible substance, beverage or ingredient used or intended for use or for sale, in whole or in part, for human consumption.

(2) *In bulk*—Not divided into parts or packaged in separate units.

(3) *Chemical or liquid*—The term includes any chemical or liquid, including any pesticide or herbicide regardless of its use or intended use. The term does not include the following:

(i) A chemical or liquid food product or produce.

(ii) A chemical or liquid being transported for use directly in the production and preparation for market of poultry, livestock and their products or in the production, harvesting or preparation for market of agricultural, agronomic, horticultural, silvicultural or aquicultural crops and commodities.

(iii) A chemical or liquid being transported for use as an ingredient in a product used in the production and preparation for market of poultry, livestock and their products or in the production, harvesting or preparation for market of agricultural, agronomic, horticultural, silvicultural or aquicultural crops and commodities.

TYPES OF WASTE

§§ 285.222—285.224. (Reserved)

Subchapter C. (Reserved)

§§ 285.301—285.303. (Reserved)

§ 285.311. (Reserved)

§ 285.312. (Reserved)

§§ 285.321—285.325. (Reserved)

§§ 285.331—285.334. (Reserved)

§§ 285.341—285.345. (Reserved)

Subchapter D. (Reserved)

§§ 285.401—285.403. (Reserved)

§§ 285.411—285.414. (Reserved)

§§ 285.421—285.424. (Reserved)

§§ 285.431—285.434. (Reserved)

[Pa.B. Doc. No. 00-2254. Filed for public inspection December 22, 2000, 9:00 a.m.]

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 1101, 1103, 1105, 1107
AND 1113]

Supplemental Nutrition Program for Women, Infants and Children (WIC Program)

A. Scope and Purpose

The Department of Health (Department) adopts amendments to Part VIII (relating to Supplemental Nutrition Program for Women, Infants and Children (WIC Program)) to read as set forth in Annex A. This rulemaking amends Chapters 1101, 1103, 1105, 1107 and 1113, which govern the authorization and management of grocery stores participating in the Department of Health's Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) and the procedures for administrative appeals of WIC applicants and participants, and local agencies and grocery stores.

The majority of the changes to the Department's regulations are necessitated by recent amendments to the Federal regulations governing the WIC Program found in 7 CFR Part 246 (relating to Special Supplemental Nutrition Program for Women, Infants and Children). The Women, Infants and Children/Food Stamp Program (FSP) Vendor Disqualification Final Rule adopted on March 18, 1999, mandates uniform sanctions for the most serious violations of WIC Program Federal regulations by grocery stores authorized to participate in the WIC Program. The purpose of the Federal amendments, as explained in the preamble to those regulations, is to curb vendor-related fraud and abuse in the WIC Program and to promote coordination between the WIC Program and the Food Stamp Program in the disqualification of stores that violate either WIC Program or Food Stamp Program rules. These regulations reflect the Department's implementation of those changes, as well as several other changes agreed upon after meetings with stakeholders.

B. Comments

Notice of proposed rulemaking was published at 30 Pa.B. 873 (February 19, 2000) with an invitation to submit written comments. In addition to the notice published in the *Pennsylvania Bulletin*, the Department sent personal notice of the proposed rulemaking by letter dated February 18, 2000, to approximately 1,400 grocery stores which were authorized to participate in the WIC Program.

The Department received no comments within the 30-day comment period.

After the comment period, the Department received comments from the Independent Regulatory Review Commission (IRRC). The Department also received a letter from Senator Vincent Hughes. Although not received within the public comment period, the Department will address the comments expressed by Senator Hughes.

The WIC Program was authorized through an amendment to the Child Nutrition Act of 1966 (42 U.S.C.A. § 1786). Congress authorized the United States Department of Agriculture, Food and Nutrition Services (USDA-

FNS), to contract with and make funds available to states to administer the program. In this Commonwealth, the WIC Program receives 100% of its funding from the USDA-FNS. The WIC Program is governed by Federal regulations found in 7 CFR Part 246. The Federal regulations require all aspects of program operation to be included in an annual State Plan of Operations which must be reviewed and approved by the USDA-FNS prior to a state's receipt of funding. See 7 CFR 246.4 (relating to State plan). Because the Department's regulations relate to the operation of the WIC Program under its delegation of authority from the USDA-FNS to operate the WIC Program, the Department was required to submit the proposed regulations to the USDA-FNS for review and approval as an amendment to the State Plan of Operations. See 7 CFR 246.4(c). The Department submitted the regulations to the USDA-FNS. The USDA-FNS notified the Department by letter dated February 25, 2000, that it found the proposed regulations to be in accordance with the WIC Program/Food Stamp Program Vendor Disqualification Final Rule.

Following is a discussion of amendments to the regulations, the comments received by the Department and the Department's response to the comments.

The Department received no comments on the proposed changes to §§ 1103.5, 1103.6, 1105.1, 1105.2, 1105.4 and 1113.2. The Department adopts as final the proposed changes to these sections.

§ 1101.2. Definitions.

The Department received no comments on this section, however, it has made two minor revisions to the definition of "store slot" for the purpose of clarification. The Department replaced the words "particular geographic" with the word "trade" to indicate that store slots are assigned to trade areas. The Department also added the words "in which the trade area is located" following the word "county" in the second sentence. This is to clarify that the Department's allocation of store slots is based upon the participant density of the specific county in which the store is located.

§ 1103.1. Certification and recertification reviews.

The Department received no comments from IRRC on this section. Senator Hughes did, however, comment on the procedure that the Department uses to certify or recertify stores seeking authorization. He expressed the opinion that the distinction between certification and recertification reviews set forth in § 1103.1, and monitoring reviews in § 1105.6 (relating to monitoring of WIC authorized stores), was illogical and invalid as a matter of law. Senator Hughes further commented that he had conducted an exhaustive review of relevant Federal regulations and that the regulations do not distinguish between periodic reviews and certification/recertification inspections. He commented that the regulations still fail to correct the problem cited by the Commonwealth Court in *Giant Food Stores v. Department of Health (Giant I)*, 554 A.2d 174 (Pa. Cmwlth. 1989).

In *Giant I*, the Commonwealth Court held that the finding of the hearing examiner upholding the Department's decision to terminate authorization of a store was not based upon substantial evidence. The decision was based upon the evidence before the Court at that time. In 1989, a store was authorized for a minimum period of 18 months up to a period of 2 years. In *Giant I*, the

Department conducted a recertification review at the store 14 months into the store's period of authorization. The store failed the review and the Department denied the store's application. The denial of the application was based upon failure to have minimum inventory standards available at the time of the review. The Court found that it was clear from the reading of the contract, that the store's authorization was valid for a period of 2 years (554 A.2d at 176) and that the violation upon which the denial of authorization was based, that is, a shortage of inventory, was such that it would warrant a warning during any other review. The court found that if a single product shortage was not sufficient to justify disqualification during a routine inspection, it was not sufficient to terminate a store from the WIC Program during a recertification inspection. The court determined that there was not substantial evidence upon the record before it to make such a distinction. Therefore, it reversed the Department's decision.

In response to this case, the Department revised its agreement with grocery stores to put a store on notice that its authorization was valid only until such time as the next certification/recertification review was conducted. The duration of certification was codified in the regulations the Department promulgated in 1999 in § 1103.1(c). A store's authorization to participate in the WIC program remains in effect only until such time as "... its application for recertification is denied or its certification expires if it fails to apply for certification." Under both Federal regulations, 7 CFR 246.12(f)(2)(xviii), and State regulations, § 1131.1 (relating to right to appeal), the expiration of a store's authorization is a nonappealable issue and there is no obligation of either party to renew the agreement, 7 CFR 246.12(f)(2)(xvi).

The certification/recertification reviews are the periodic review of vendor qualifications the State agencies are required to conduct under 7 CFR 246.12(g). The reviews are conducted to determine if stores meet the qualifications necessary to be authorized. The qualifications, called selection and limitation criteria, were established by the Department to further the purpose of the program by ensuring stores are able to meet the needs of participants going to the stores for WIC purchases. For instance, stores are required to maintain minimum inventory of WIC authorized foods to ensure that these foods are available to participants when making purchases. If the stores do not meet the qualifications, they are not authorized. To authorize a store which does not meet the qualifications the Department has established to serve the needs of the WIC participants would not further the purpose of the WIC Program. Section § 1103.1(f) specifically states that the Department, when making a decision on an application for certification or recertification, will deny the application if the criteria for certification or recertification set forth in § 1103.4(a) and (b) are not satisfied, and that there will be no warning or opportunity to correct problems identified during certification or recertification reviews.

In contrast to the certification/recertification reviews which are required by Federal regulation to be conducted at least once every 2 years, 7 CFR 246.12(g), the Department has also implemented a system to monitor stores which have been authorized to participate in the program. State agencies are required to monitor authorized stores under Federal regulation, 7 CFR 246.12(i). The system to monitor stores is set forth under § 1105.6 (relating to monitoring of WIC authorized stores). The purpose of the monitoring is to ensure that once a store has demonstrated that it meets the qualifications neces-

sary to be authorized, the store continues to comply with the program regulations. The purpose of monitoring reviews, as set forth in § 1105.6, is to determine compliance with applicable Federal and State regulations, and to investigate complaints regarding stores. Thus, the purpose of monitoring reviews and certification/recertification reviews are completely different and should be treated differently, regardless of the fact that some of the same factors may be used in conducting the reviews.

The decision issued in *Giant I* was issued 10 years prior to the publication of the regulations. The issue raised by Senator Hughes had been presented to the Department prior to its initial promulgation of the WIC regulations in 1999. The Department's regulations specifically correct the issue raised by the court in the *Giant I* case. The regulations clarify that there are different and distinct purposes for the types of reviews Senator Hughes commented on. The Department conducts certification/recertification reviews to determine whether or not a store meets the minimal qualifications necessary to be certified to participate in the WIC Program, while monitoring reviews determine whether a store is complying with regulations during a period of authorization.

In *Giant I*, as stated previously, the appellate court had no Department regulations before it to distinguish between the two types of reviews. Also, the record before the court did not reflect that the USDA-FNS construed its regulations to embrace such a distinction. Now, however, the USDA-FNS has approved of the regulatory scheme the Department uses for authorization of stores and found it to be in accordance with the authority the Department was delegated by Federal regulation.

Due to moving the criterion contained in § 1103.4(a) (13) to limitation criteria contained in § 1103.4(b) as discussed later herein, the Department citation that appears in subsection (b)(2) for determining whether a store slot is available is incorrect. The Department has revised the proposal to reflect the proper citation. Other than this revision, the Department has made no change to this section.

§ 1103.2. Probationary certification.

IRRC asked for clarification of a citation found in subsection (b)(2). IRRC commented that there appeared to be a typographical error in subsection (b)(2) in the cross reference to inadequate participant access. In the proposed rulemaking, § 1107.3(c)(8) was given as the cite for an explanation of inadequate participant access. The correct citation is § 1103.7(c)(8). The Department has revised the proposal to reflect the proper citation.

§ 1103.3. Authorization of store slots.

Subsection (b) provides that by October 1 of each year the Department will evaluate the WIC participant population to determine the store slot allocation per county for each Federal fiscal year. IRRC asked for an explanation of how the public and the industry will be notified of annual changes to store slots. Upon consideration of this comment, the Department added language to this section to state that the Department will publish the yearly allocations of stores slots in the *Pennsylvania Bulletin* no later than October 30 of each year, thereby providing notification to the public and industry.

§ 1103.4. Selection and limitation criteria; authorization process.

The Department received no comments on this section, however, it has made a revision for the purpose of clarification. An incorrect citation appears in subsection

(a)(2). The Department has replaced the reference to § 1107.1(i) with § 1107.2(j), the proper reference.

The Department had proposed to move the limitation criterion formerly contained in subsection (b)(2) to a selection criteria in subsection (a)(13). This criterion stated that the Department would not authorize a store if it was located within 1 mile of another WIC authorized store unless the Department determined that there was sufficient WIC participant shopping in order to support the authorization of an additional WIC authorized store. In the proposed rulemaking, the Department set forth a new three-tier method for defining "sufficient participant shopping." This method was based upon the proposed method for assigning store slots in § 1103.3 (relating to authorization of store slots). Upon further consideration, the Department has determined that the criterion which appears in the proposed regulations as subsection(a)(13), is, in fact, a limitation criterion. The Department uses this as a limitation criterion in addition to that contained in subsection (b)(1) which requires that a store slot be available in a trade area before authorization of a store. Notwithstanding the fact that a store slot may be open, if a store is located within 1 mile of another store and there is not a sufficient number of WIC participants making their purchases in this area, the store will not be authorized. The purpose of this criterion is to ensure an adequate distribution of WIC authorized stores in a trade area by limiting the authorization of stores to locations within a trade area where participants are shopping. The Department has moved the criterion to subsection (b)(2), and has revised the numbering in subsection (b) to reflect the change. The Department has made additional changes to subsection (c)(1) and (3) to reflect the move of this criterion from a selection criterion to a limitation criterion.

§ 1103.7. Inadequate participant access.

The Department received no comments on this section, however, it has made a revision for the purpose of clarification. In subsection (c)(2), the Department has deleted the words "according to" and replaced them with "in accordance with one of." The Department made this change so that the language used in subsection (b)(1), (2) and (3) is consistent.

§ 1105.3. Terms and conditions of participation.

In subsection (a), the Department has corrected the reference to section § 1107.1 (relating to imposition of sanctions).

§ 1105.6. Monitoring of WIC authorized stores.

In subsection (b)(1)(vi), (c)(6) and (d)(6), references are made to the "disqualification" of a store based upon violations of statutes and regulations governing the store's participation in the WIC Program detected during compliance investigations, routine reviews and training buys. Due to the changes in the proposed regulations which permit the Department to impose a civil money penalty in lieu of a disqualification if the Department determines that inadequate participant access would result if the store were to be disqualified, the Department has changed the language in these three subsections to reference sanctions under § 1107.1 (relating to imposition of sanctions). The section sets forth the procedure for the Department to use in determining the appropriate sanction to be imposed, whether it be a disqualification or a civil money penalty.

§ 1107.1. Imposition of sanctions.

The Department changed the language in proposed subsection (a) to provide that the Department may

choose, in certain circumstances, to not provide a store with a prior warning that program violations were occurring before imposing sanctions. The Department added the words "in the case of fraud, trafficking, sale of alcohol or alcoholic beverages or tobacco products, and other serious program violations or offenses" to set forth the circumstances that would guide the Department's determination that no prior warning should be given before imposing the sanction. This change is consistent with 7 CFR 246.12(k)(3) (relating to participant and vendor sanctions), and makes clear that providing a prior warning is an option for the Department only under certain circumstances. As stated in the preamble to the WIC/FSP Vendor Disqualification Final Rule:

The location of this provision (referring to § 246.12(k)(3)) in the final rule clarifies that it applies to both mandatory and State agency-established sanctions. The provision clearly makes the use of prior warning a State agency option. However, the prior warning cannot be provided for trafficking violations or "the sale of alcohol, alcoholic beverages or tobacco products" violation because these violations warrant a mandatory sanction for the first offense. Also, while prior warning for other violations may be acceptable for the first incidence, continual use of the warning, undermines the State agency's fraud and abuse investigation and prevention efforts. 64 FR 13314.

For clarification, the Department has added the word "inadequate" before the words "participant access" in the last sentence of subsection (a). This change promotes consistency with the language used throughout the regulations.

New subsections (b) and (c) both state "... the Department will give the store the option of paying a civil money penalty in lieu of...disqualification..." The parallel portions of 7 CFR 246.12(f)(2)(xix) and (xx) provide "... the State agency shall impose a civil money penalty..." IRRC asked the Department to explain why the language in the proposed amendment differs from the language in the Federal regulation.

The Federal regulations are mandatory for the Department with respect to the options that it may use when imposing sanctions upon stores in certain circumstances. The Federal regulations direct that the Department must impose a civil money penalty in lieu of disqualification in instances of inadequate participant access. Nevertheless, subsections (b) and (c) are adopted as proposed and provide the option to the store to pay the civil money penalty in lieu of disqualification. This is because the WIC Program is a voluntary program in which vendors choose to participate. The Department can not require the store to pay the civil money penalty, and thus force the continued participation in the WIC Program by the store. The store may make a business decision that it will accept the disqualification for the specified period of time in lieu of payment of the civil money penalty. The USDA-FNS reviewed the proposed regulation and found it to be proper and in accordance with the Final Federal Vendor Disqualification Rule.

§ 1107.1a. Disqualifications.

Under subsection (d)(3), the Department added the language "on the premises at all times" to clarify that the store is responsible for always maintaining the minimum inventory required under § 1103.5 (relating to minimum inventory) on the premises. The additional language is consistent with the proposed regulations that permit the

store to maintain the inventory on the premises of the store, not the store shelves, as had been the previous requirement.

IRRC had two comments with respect to this section. First, IRRC commented that in subsection (d)(9), the phrase "or with another WIC check for purchases made with a WIC check" is unclear, and asked for clarification as to what circumstances the phrase addressed. This phrase addresses a situation in which a store's bank rejects a WIC check that the store improperly accepted and the store then attempts to have the WIC participant reimburse the store for the rejected check with another WIC check or with the participant's own money. No change was made to this proposal.

Secondly, IRRC asked for clarification as to proposed subsection (d)(14), which provides for a 1-year disqualification of a store which fails "to remit payment of an overcharge within the specified time frame." IRRC asked for clarification as to the time frame which the phrase "within the specified time frame" referred. To clarify this, the Department added references to §§ 1105.2(f) and (g) and 1105.6(f) (relating to overcharge recovery system; and monitoring of WIC authorized stores) which provides the specific time frames for which remittance is due.

Subsection (h) relates to disqualifications based on an FSP disqualification. The Department has added the words "WIC Program" in the last sentence of this subsection to clarify that it is the WIC Program disqualification as a result of a disqualification from the Food Stamp Program that is not subject to administrative or judicial review. The Department has deleted language in subsection (1), which is unnecessary.

§ 1107.2. Civil money penalties.

The Department received no comments on this section, however, it has made a revision for the purpose of clarification. Under subsection (b)(1), the Department removed the proposed language that would require civil money penalties for stores denied recertification to be calculated at 10% of the average monthly sales for the most recent 6-month period. For stores denied recertification for which the option of paying a civil money in lieu of the disqualification is available, the civil money penalty will be calculated on a 5% of the average monthly sales for the most recent 6-month period as set forth in subsection (b)(2).

IRRC noted an inconsistency between proposed subsection (b)(2) and the preamble to the proposed regulations. IRRC commented that proposed subsection (b)(2) begins "For disqualifications identified in § 1107.1a(d)(2)—(15) . . ." and the preamble identified this as § 1107.1a(d)(2)—(16). The citation was incorrect in the proposed regulations and is corrected to reflect the proper reference to § 1107.1a(d)(2)—(16).

In subsection (b)(2), the Department also removed the proposed words "the store shall pay" to clarify the sentence. These words were inadvertently added in the language of the proposed regulations and the removal of the language does not change the meaning of the subsection.

In subsection (f), the Department has clarified the example provided in the last sentence by explaining that an outstanding financial liability includes overcharges for the "sale of unauthorized foods" as opposed to "the unauthorized sale of foods." The word "unauthorized" has been deleted before the word "sale," then added after the word "sale" to make clear the intent.

§ 1113.1. Right to appeal.

The Department received no comments on this section, however, it has made a revision for the purpose of clarification. In subsection (b)(3), the Department has added the words "from the WIC Program" following the first word of the proposed subsection (b)(3) to clarify that a disqualification from the WIC Program as a result of a disqualification from the FSP is the disqualification that is non-appealable. This change is consistent with the Department's clarification made to § 1107.1a(h) set forth previously.

C. Fiscal Impact

The WIC Program is 100% Federally funded. No State dollars are involved in the operation of the WIC Program. The regulatory changes to § 1103.3 (relating to authorization of store slots) that change the method of allocating store slots based upon WIC population density has the potential for increasing by approximately 200 the number of stores authorized to participate in the WIC Program. As a result, the Department anticipates an increase of approximately \$96,000 annually in store-related monitoring costs.

D. Paperwork Requirements

The regulations will not increase paperwork for the WIC Program participants or those grocery stores voluntarily participating in the WIC Program. Except to the extent that 200 additional stores will be participating in the WIC Program, the regulations also will not increase paperwork for the Department.

E. Effective Date/Sunset Date

The regulations shall be effective upon publication. The Department will send approximately 1,400 grocery stores currently participating in the WIC Program direct notice of the final regulations upon publication.

These regulations will be monitored continually and will be updated as required by changes in Federal statute or Federal regulations governing the WIC Program. Therefore, no sunset date has been set.

F. Statutory Authority

The WIC Program was authorized through an amendment to the Child Nutrition Act of 1966 (42 U.S.C.A. § 1786). Congress authorized the USDA-FNS to contract with and make funds available to States to administer the program. In this Commonwealth, the WIC Program receives 100% of its funding from the USDA-FNS.

There are no state statutes governing the operation or administration of the WIC Program. There is a State statute found at 62 P. S. § 2951 which authorizes additional State funding for the expansion of the WIC Program. The Commonwealth, however, has not provided funding for the expansion of the program since State Fiscal Year 1996.

The existing State regulations were developed and published in the *Pennsylvania Bulletin* on July 24, 1999, following the decision of the Commonwealth Court in *Giant Food Stores, Inc. v. Commonwealth of Pennsylvania, Department of Health (Giant II)*, 713 A.2d 177(1998). *Giant II* held that the Department was required to promulgate regulations governing the selection and management of grocery stores to participate in the WIC Program. The State regulations added Part VIII. The regulations also repealed 28 Pa. Code §§ 8.41—8.74, the Department's then existing regulations pertaining to WIC Program administrative appeals.

The changes to the existing State regulations contained herein are submitted under the Department's general power and duty to protect the health of the people of the Commonwealth (71 P. S. § 532), and under *Giant II*.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 9, 2000, the Department submitted a copy of a notice of proposed rulemaking, published at 30 Pa.B. 873 to IRRC and to the Chairperson of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare.

In compliance with section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), the Department submitted a copy of the final-form regulations to IRRC and the Committees on September 18, 2000. In addition, the Department provided IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

In preparing the final-form regulations, the Department has considered all comments it received. The USDA-FNS reviewed and approved these regulations on February 25, 2000.

This final-form regulation was deemed approved by the House Health and Human Services Committee and deemed approved by the Senate Public Health and Welfare Committee. IRRC met on October 19, 2000, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

H. Contact Person

Questions regarding these regulations may be submitted to Greg Landis, Chief, Grants and Retail Store Management Unit, WIC Program, Room 604, Health and Welfare Building, Harrisburg, PA 17109, (717) 783-1289. Persons with disabilities may submit questions in alternative formats such as by audio tape, braille or by using V/TT: (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

Persons with disabilities who would like to obtain this document in an alternative format (such as, large print, audio tape, braille) should contact Greg Landis so that he may make the necessary arrangements.

I. Findings

The Department finds that:

(1) Public notice of intention to adopt the regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no comments were received.

(3) The adoption of regulations in the manner provided by this order is necessary and appropriate for the compliance with the Federal regulations governing the WIC Program.

J. Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 28 Pa. Code Chapters 1101, 1103, 1105, 1107 and 1113, are amended by adding § 1107.1a and by amending §§ 1101.2,

1103.1—1103.7, 1105.1—1105.4, 1105.6, 1107.1, 1107.2, 1113.1 and 1113.2 to read as set forth in Annex A.

(2) The Secretary of Health shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as required by law.

(3) The Secretary of Health shall submit this Order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for their review and action as required by law.

(4) The Secretary of Health shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(5) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

ROBERT S. ZIMMERMAN, Jr.,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 5807 (October 14, 2000).)

Fiscal Note: Fiscal Note 10-161 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 28. HEALTH AND SAFETY

PART VIII. SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC PROGRAM)

CHAPTER 1101. GENERAL PROVISIONS

§ 1101.2. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Allowable foods—Foods and infant formula on the WIC food list. These products meet nutritional standards established by the USDA-FNS and are authorized by the Department for purchase with WIC checks.

Applicant—An individual applying to become a participant.

Authorized representative—For an applicant or participant, an adult applicant or participant, a parent or guardian of an applicant or participant who is an infant or child or an individual designated by that person to represent the applicant or participant in administrative proceedings involving the WIC Program. For a local agency or store, an individual designated by the local agency or store to represent it in administrative proceedings involving the WIC Program.

Breastfeeding woman—A woman, during 1 year postpartum, who is breastfeeding her infant.

Certification—For purposes of Chapters 1101—1109 and 1113, the term means the Department's acceptance of a store, not currently authorized to participate in the WIC Program, as a WIC authorized store. For purposes of Chapter 1111 (relating to applicant and participant appeals), the term means the Department's acceptance of an applicant to participate in the WIC Program as a participant.

Child—A person 1 year of age or older but under 5 years of age.

Clinic—A facility where applicants apply for and participants receive WIC Program services other than food benefits.

Compliance buy—A covert purchase at a WIC authorized store, with a WIC check, conducted to enable the

Department to evaluate adherence by a WIC authorized store with this part governing the store's participation in the WIC Program.

Compliance investigation—A series of at least two compliance buys conducted at the same WIC authorized store.

Competent professional authority—An individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods. The following persons are the only persons the Department will authorize to serve as a competent professional authority: physicians, nutritionists (Bachelor's or Master's Degree in Nutritional Sciences, Community Nutrition, Clinical Nutrition, Dietetics, Public Health Nutrition or Home Economics with emphasis on nutrition), dietitians, registered nurses, physician's assistants (certified by the National Committee on Certification of Physician's Assistants or certified by the State medical certifying authority), or State or local medically trained health officials. The term also applies to an individual who is not on staff at the local agency but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on staff of the local agency.

Department—The Department of Health of the Commonwealth.

Disqualification—For the purposes of Chapters 1101, 1103, 1105, 1107, 1109 and 1113, the term means the action by the Department to end participation of a WIC authorized store in the WIC Program for reasons of fraud, abuse or other violations of this part governing the store's participation in the WIC Program. For purposes of Chapter 1111 (relating to applicant and participant appeals), the term means action by the Department or local agency to end participation of a participant who no longer meets the qualifications necessary to participate in the WIC Program or for reasons of fraud, abuse or violation of standards governing the participant's enrollment in the WIC Program.

Division of WIC—Division of WIC in the Department.

Endorser—The parent or guardian of an infant or child participant who is authorized to use and sign the WIC checks of the infant or child for purchase of allowable foods.

Filing date—The date on which the local agency or the Department receives an appeal.

Food prescription—A designation by a competent professional authority of allowable foods in specified quantities to meet a participant's nutritional needs based upon a determination of nutritional risk.

Health services—Routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

High risk store—A store identified as a possible perpetrator of fraud or abuse through analysis of redemption patterns of WIC checks or WIC sales, through compliance violations, or by complaints of participants or WIC Program staff.

Infant—A person under 1 year of age.

Inventory audits—A comparison of a WIC authorized store's inventory levels and purchases of a particular WIC product over a specific period of time, to actual WIC purchases of the same product during the same period of time, to determine if the store had adequate product

quantities available to satisfy claims made for WIC reimbursement of the product during the same period of time.

Limitation criteria—Criteria in § 1103.4(b) (relating to selection and limitation criteria; authorization process) which the Department has established to limit the number of WIC authorized stores in a particular area to assure that State and local officials can effectively manage, review and monitor WIC authorized stores.

Local agency—A public or private nonprofit health or human service agency with which the Department contracts to provide WIC Program services for a specific geographic area.

Nutritional risk—A determination that one of the following exists:

(i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements.

(ii) Other documented nutritionally related medical conditions.

(iii) Dietary deficiencies that impair or endanger health.

(iv) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

Onsite review—An overt visit to a store by Federal, Department or local agency personnel to determine if the store meets the selection criteria necessary to be certified or recertified as a WIC authorized store, or a visit to a WIC authorized store after certification or recertification, to determine whether the store is complying with this part governing the store's participation in the WIC Program.

Participant—A pregnant woman, breast-feeding woman, postpartum woman, infant or child enrolled in the WIC Program.

Participant certification period—The period of time during which an individual is authorized to participate in the WIC Program.

Postpartum woman—A woman, during 6 months after termination of pregnancy.

Pregnant woman—A woman determined to have one or more embryos or fetuses in utero.

Premises—The sales floor and storage areas within the building housing the authorized store.

Proxy—A person authorized by the local agency and the participant, or by the participant's parent or guardian if the participant is an infant or child, to pick up or use WIC checks to make purchases for that participant.

Recertification—The Department's authorization of a WIC authorized store, following a review process, to continue as a WIC authorized store.

Redeem—A WIC authorized store submitting a WIC check to its bank for the purpose of securing a money payment for the amount appearing in the "Pay Exactly" box on the WIC check.

Sales floor—The display shelving, the floor in the area normally used for retail trade and the area behind the customer service desk, excluding other areas not accessible to the general public.

Sanction—A penalty imposed by the Department upon a WIC authorized store for violation of this part governing the store's participation in the WIC Program. The

term does not include a decision to deny certification or recertification following a certification or recertification onsite review process.

Secretary—The Secretary of Health of the Department.

Selection criteria—Criteria in § 1103.4(a) which the Department has established which a store seeking to be certified or recertified is required to satisfy.

Standard formula—Infant formula products that do the following:

(i) Meet the Federal WIC regulatory definition of an iron-fortified formula (7 CFR 246.10(c)(1)(I) (relating to supplemental foods)).

(ii) Comply with the Infant Formula Act of 1980, the act of September 26, 1980 (Pub.L. No. 96-359, 94 Stat. 1190), which amended the Food and Drug Act.

(iii) Meet the requirements of an "infant formula" as opposed to an "exempt infant formula" or "medical food" as determined by the Food and Drug Administration (FDA), United States Department of Health and Human Services.

Stale-dated—After the date imprinted on the product as the recommended last date for sale or use.

Store slot—A slot established by the Department for a WIC authorized store in a trade area. The number of store slots the Department authorizes for a geographic area assigned to a local agency is based on the density of participant population in the county in which the trade area is located and the actual number of participants in the county.

Trade area—A designated geographic area within the geographical area assigned to a local agency, which is organized to serve the participant populations in that designated area through an assigned number of store slots.

Training buy—The presentation of a WIC check by a Federal, Department or local agency representative to purchase foods at a WIC authorized store, which does not result in the actual tender of the WIC check or the purchase of the foods, to evaluate adherence by a WIC authorized store with this part governing the store's participation in the WIC Program.

USDA-FNS—The United States Department of Agriculture, Food and Nutrition Service.

WIC authorized store—A retail food store which is authorized through certification or recertification to provide allowable foods to participants by accepting WIC checks.

WIC check—A negotiable instrument issued to participants to purchase allowable foods at WIC authorized stores.

WIC food list—A list published by the Department in the *Pennsylvania Bulletin* of foods and infant formula which may be purchased with WIC checks.

WIC identification card—A document issued by the Department to a participant, which is used for identification purposes, signature verification and authorization to purchase allowable foods with WIC checks at a WIC authorized store.

WIC Program—The Special Supplemental Nutrition Program for Women, Infants and Children.

WIC Program benefits—Supplemental foods, nutrition education and referral to health services.

CHAPTER 1103. AUTHORIZATION OF STORES

§ 1103.1. Certification and recertification reviews.

(a) *Qualifying for certification or recertification.* To be certified or recertified as a WIC authorized store, a store shall meet the selection criteria in § 1103.4(a) (relating to selection and limitation criteria; authorization process) at the time of the onsite review. If the number of applicants satisfying the selection criteria exceeds the number of stores the Department permits to participate in the WIC Program under the limitation criteria in § 1103.4(b), the Department will determine which store to certify or recertify under the process in § 1103.4(c). The Department will exempt a store from satisfying the selection and limitation criteria only if there is a finding of inadequate participant access, as set forth in § 1103.7 (relating to inadequate participant access).

(b) *Certification or recertification review process.* The certification or recertification review process is as follows:

(1) A person authorized on behalf of a store to make an application for certification or recertification shall contact the local agency responsible for the county in which the store is located to request an application.

(2) The local agency shall determine if a store slot is available in accordance with § 1103.4(b).

(3) If a store slot is available, the local agency shall send the WIC Program information and an application to the store.

(4) A store that is not certified shall complete the application in accordance with the instructions therein and return it to the local agency. If the local agency is apprised by a certified store that it wants to be recertified, the local agency shall collect the application from the store at the time of the onsite review. The Department will not accept an application for certification or recertification from a store that has been provided notice of disqualification or is disqualified from the WIC Program. The WIC Program disqualification period shall be completed before an application will be accepted by the Department. The Department may deny an application for certification from a new owner of a recently purchased store if the Department determines that the purpose of the sale of the business was a sham transaction to avoid a WIC disqualification.

(5) A person authorized on behalf of a chain of stores to make an application for certification or recertification shall complete a separate application for each store in the chain that seeks certification or recertification.

(6) The local agency shall schedule an onsite review of the store for the purpose of determining if the store meets the selection criteria in § 1103.4(a). The local agency will notify the store of the approximate date of the review.

(7) The local agency shall conduct the onsite review and forward the results to the Department for a decision on the store's application for certification or recertification.

(8) The Department will notify the store of its decision on the store's application for certification or recertification.

(c) *Duration of certification or recertification.* The certification or recertification of a store shall remain in effect until the store is disqualified, changes ownership, withdraws from the WIC Program, its application for recertification is denied or its certification expires if it fails to apply for recertification. The Department will provide 30 days written notice to the store prior to expiration of WIC

certification for any store failing to apply for recertification. Either the Department or the WIC authorized store may terminate the certification for cause after providing at least 30 days advance written notice.

(d) *Periodic reviews.* At least once every 2 years, the Department will conduct contemporaneous certification and recertification reviews in a trade area for the purpose of filling store slots in that trade area with WIC authorized stores. Both stores that are certified, and stores that are not certified but want to become WIC authorized stores, shall make an application for certification or recertification. The Department will send a notification of the contemporaneous certification/recertification review process to each WIC authorized store and each store on the waiting list. The notice shall include information advising the store of the procedure for being reviewed for the purpose of receiving certification or recertification. The Department will notify a store which fails to seek recertification or is denied recertification under this subsection of the date the store's current certification expires. Expiration of the certification shall be no less than 30 days after the mailing date of the notice.

(e) *Moratorium on applications.* The Department will not accept applications, or schedule or conduct certification reviews in a trade area 90 days or less prior to the scheduled start date of the contemporaneous certification/recertification reviews in that trade area. The Department will grant an exception to this moratorium only if the Department finds that there would be inadequate participant access, as set forth in § 1103.7, if it does not consider the application. A store granted certification under this exception shall be exempt from the contemporaneous certification/recertification review if it has been certified for less than 60 days prior to the date the contemporaneous reviews begin in the trade area.

(f) *No opportunity to correct problems.* When the Department is making a decision on an application for certification or recertification, it will deny the application if the criteria for certification or recertification set forth in § 1103.4(a) and (b) are not satisfied. The Department will make its decision on the application without providing a warning or an opportunity to correct problems identified during the certification or recertification review.

(g) *Eligibility for stores denied certification or recertification.* A store which has been denied certification or recertification shall wait 6 months from the effective date of the Department's decision to reapply, except a store denied certification or recertification under § 1103.4(c)(2) will be placed on a waiting list and will be considered immediately for certification if a store slot becomes open.

§ 1103.2. Probationary certification.

(a) *Criteria for probationary certification.* If during the certification or recertification review, the store fails to meet one or more of the qualifications in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process), the Department may grant probationary certification to the store for a period not to exceed 6 months when either of the following applies:

(1) Inadequate participant access would occur if the store is not certified or recertified.

(2) A store is reviewed prior to opening to the public and the store has not stocked its dairy section or its frozen juice section at the time of the review.

(b) *Probationary certification reviews.*

(1) If a store receives probationary certification, except in situations of inadequate participant access identified in

§ 1103.7(c)(8) (relating to inadequate participant access), the Department will conduct an unannounced onsite review during the probationary certification period to determine if regular status should be granted to the store. The Department may rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection criteria during this review.

(2) If a store receives probationary certification due to inadequate participant access as identified in § 1103.7(c)(8), the Department will conduct a certification review of the store and any other stores on the waiting list within the store's trade area. The Department may rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection or limitation criteria during this review.

(c) *Extension of probationary certification.* If the store fails the review conducted during the probationary certification period, and inadequate participant access exists as determined by the Department, the Department may extend probationary certification for an additional 3 months during which time at least one representative of the store who is responsible for training store personnel on the WIC Program shall attend corrective training.

(d) *Extended probationary certification reviews.* The Department will conduct an unannounced onsite review during the extended probationary certification period after the store representative has attended corrective training, to determine if certification should be granted to the store. The Department will rescind probationary certification and deny the store's application to serve as a WIC authorized store if the store fails to meet one or more of the selection criteria during this review.

(e) *Rescission of probationary certification.* If the Department rescinds the probationary or extended probationary certification of a store, the store is not eligible to reapply for certification for 6 months from the date of the Department's rescission of the certification.

§ 1103.3. Authorization of store slots.

(a) *Assignment of store slots.* The Department will assign store slots based upon WIC participant density according to the following:

(1) In counties with WIC participant density greater than 100 participants per square mile, the Department will assign one store slot for every 175 WIC participants.

(2) In counties with WIC participant density of 25 to 100 participants per square mile, the Department will assign one store slot for every 150 WIC participants.

(3) In counties with WIC participant density less than 25 participants per square mile, the Department will assign one store slot for every 125 WIC participants.

(b) *Yearly allocation of store slots.* By October 1 of each year, the Department will evaluate WIC participant population to determine store slot allocations per county for each Federal Fiscal Year. The Department will publish these allocations in the *Pennsylvania Bulletin* no later than October 30 of each year.

§ 1103.4. Selection and limitation criteria; authorization process.

(a) *Selection criteria.* The Department will use the following selection criteria to identify stores that meet the operational criteria to serve as a WIC authorized store:

(1) The store shall be located within this Commonwealth.

(2) A store shall serve or reasonably expect to serve at least 25 participants per month.

(i) The Department will provide a store seeking certification which has not been certified previously, an 8-month period to determine if the store is serving 25 participants. The Department may disqualify a store for a period of no less than 6 months in accordance with § 1107.1a(j) (relating to disqualifications) if it is not serving 25 participants at the end of the 8-month period.

(ii) The Department may deny recertification if the store is not serving 25 participants per month in the most recent month for which the Department has participant data at the time the recertification review is conducted.

(3) The store shall have allowable foods properly stored and refrigerated.

(4) The store shall not have stale-dated allowable foods on its sales floor.

(5) The store shall have available on the premises at all times the minimum inventory requirements in § 1103.5 (relating to minimum inventory) of allowable foods.

(6) The store shall have shelf prices less than the maximum allowable cost established by the Department for Food Prescription One and Food Prescription Two. The highest price of each allowable food available at the store, regardless of brand, shall be recorded to determine if the store's prices are within the maximum allowable prices established by the Department. The Department will publish in the *Pennsylvania Bulletin*, no later than September 15 of each year, the maximum allowable prices for Food Prescription One and Food Prescription Two. Revisions to the maximum allowable prices will be published in the same manner. Food Prescription One and Food Prescription Two are as follows:

(i) Food Prescription One consists of the following:

(A) Eighteen quarts or nine half gallons of milk.

(B) One pound of cheese.

(C) One dozen eggs.

(D) One 15 to 18 ounce container of peanut butter.

(E) One pound of dried beans or peas.

(F) Four 11.5 to 12 ounce containers of frozen concentrated juice or four 46 ounce containers of single strength juice.

(G) Thirty ounces of cereal.

(ii) Food Prescription Two consists of: Thirty-one 13 ounce cans of concentrated contract brand milk or soy based infant formula.

(7) The store shall be open for business at least 8 hours per day, 6 days per week.

(8) The store shall be sanitary. There may not be evidence of unremoved rubbish, vermin, or general lack of cleanliness.

(9) The store shall operate in a permanent fixed location where participants may purchase allowable foods with their WIC checks.

(10) The store may not be currently disqualified from participation in the Food Stamp Program.

(11) The store may not be currently disqualified from the WIC Program or have been denied certification or recertification by the WIC Program within the past 6 months unless the conditions of § 1103.6(a)(2) (relating to waiting list) are met.

(12) The store shall have implemented all required corrective actions resulting from monitoring by the Department, including repayment of any overcharges to the WIC Program, and shall be in compliance with all applicable Federal and State regulations.

(b) *Limitation criteria.* The Department will use the following criteria to limit the number of WIC authorized stores in a trade area:

(1) A store slot shall be available in the trade area in which the store is located.

(2) The store may not be located within 1 mile of another WIC authorized store within the same trade area unless the Department determines that there is sufficient WIC participant shopping within the 1 mile area to support an additional WIC authorized store. For the purpose of this paragraph, to support the authorization of each additional WIC authorized store within the 1 mile radius, sufficient WIC participant shopping shall be determined by the following:

(i) For counties with WIC participant density greater than 100 participants per square mile, there shall be at least 175 WIC participants shopping within 1 mile of the applying store for each store slot authorized.

(ii) For counties with WIC participant density of 25 to 100 participants per square mile, there shall be at least 150 WIC participants shopping within 1 mile of the applying store for each store slot authorized.

(iii) For counties with WIC participant density less than 25 participants per square mile, there shall be at least 125 WIC participants shopping within 1 mile of the applying store for each store slot authorized.

(c) *Authorization process.*

(1) If the total number of stores meeting all selection criteria are less than or equal to the total number of store slots assigned to the trade area and there is sufficient WIC participant shopping as defined in subsection (b)(2), all stores meeting the selection criteria shall be authorized to participate in the WIC Program.

(2) If the total number of stores meeting all selection criteria are greater than the total number of store slots assigned to the trade area, the Department will certify or recertify the stores having the lowest weighted prices for the two food prescriptions, until the store slots in the trade area have been filled. For determining the weighted food prices for the two food prescriptions, the Department will add 80% of the total of the store's highest price for Food Prescription One to 20% of the store's highest price for Food Prescription Two.

(3) The criteria in paragraph (2) also apply when more than one store applies for certification or recertification within 1 mile and there is not a sufficient WIC participant shopping as defined in subsection (b)(2) to support an additional WIC authorized store or stores.

§ 1103.5. Minimum inventory.

(a) A store shall have available on the premises at the time of the certification or recertification onsite review, and maintain at all times thereafter while participating as a WIC authorized store, minimum inventory requirements of allowable foods.

(b) Minimum inventory requirements of allowable foods are as follows:

(1) *Formula.*

(i) Contract milk-based formula with iron:

(A) Sixty-two 13 ounce cans of liquid concentrate.

- (B) Twenty-five 32 ounce cans of ready-to-feed.
- (C) Six 14.1 ounce cans of powdered.
- (ii) Contract soy-based formula:
 - (A) Thirty-one 13 ounce cans of liquid concentrate.
 - (B) Twenty-five 32 ounce cans of ready-to-feed.
 - (C) Six 14 ounce cans of powdered.
- (iii) Other standard formulas specified on the WIC check are not minimum inventory requirements. The store shall be able to provide these within 72 hours after a participant makes a request for the formula.
- (2) *Milk*.
 - (i) Fluid whole, vitamin D fortified, fourteen 1/2 gallons or quart equivalent.
 - (ii) Fluid skim or low fat, vitamin A and D fortified, four 1/2 gallons or quart equivalent.
 - (iii) Nonfat dry, 2 pounds, in 1 or 2 pound containers.
 - (iv) Evaporated, twelve 12 ounce cans.
- (3) *Natural domestic cheese*. One pound each of three varieties prepacked in 8 or 16 ounce packages.
- (4) *Grade "A" eggs*. Five, 1 dozen containers.
- (5) *Juices*.
 - (i) Three varieties with a total of nine 46 ounce containers.
 - (ii) Frozen concentrated or shelf stable concentrated, two varieties with a total of nine 11.5 to 12 ounce containers.
 - (iii) Infant, three varieties with a total of fifteen 4 ounce individual containers.
- (6) *Cereal*.
 - (i) Adult, five varieties in 8 ounce or larger packages totaling at least 72 ounces.
 - (ii) Infant, two varieties, totaling at least 32 ounces.
- (7) *Peanut butter*. Five 15 to 18 ounce containers.
- (8) *Dried peas and beans*. Two varieties, 1 pound each.
- (9) *Tuna*. Four 6 to 6.5 ounce cans, chunk, light, packed in water.
- (10) *Carrots*. Two pounds of whole, unpeeled fresh carrots in 1 or 2 pound cello pack, or two cans of sliced carrots in 14 to 20 ounce cans.
- (c) *Annual publication of WIC food list*. The Department will publish in the *Pennsylvania Bulletin*, no later than September 15 of each year, the name of the contract brand of formula and, if applicable, the names of allowable brands of foods, and the maximum price permitted for those allowable foods for which the Department establishes a maximum price.
- (d) *Waivers*. The Department may grant minimum inventory waivers for allowable foods listed in subsection (e) under the following circumstances:
 - (1) For a WIC authorized store, the Department has no current reported purchases of the allowable foods based upon WIC checks redeemed by the store.
 - (2) For a store seeking certification, the Department has no current reported purchases of the allowable foods based upon WIC checks redeemed by the WIC authorized store closest to the store applying for certification.
 - (3) The store occupies the same physical location as a prior WIC authorized store, the waiver was granted to

the prior WIC authorized store, and the application for certification from the new owner is received by the Department within 3 months after the date the prior WIC authorized store's certification to participate in the WIC Program terminated.

(e) *Waiverable allowable foods*. These foods are:

- (1) Contract milk based with iron ready-to-feed infant formula.
- (2) Contract milk based with iron powdered infant formula.
- (3) Contract soy based ready-to-feed infant formula.
- (4) Contract soy based powdered infant formula.
- (5) Nonfat dry milk.
- (6) Evaporated milk.
- (7) Carrots.
- (8) Tuna.

(f) *Expiration of waivers*. A minimum inventory waiver of an allowable food granted by the Department shall expire upon the presentation to the store, on behalf of a participant, of a WIC check for the purchase of that allowable food. The WIC authorized store shall provide the food item within 72 hours after presentation of the WIC check.

§ 1103.6. Waiting list.

(a) *Placement of stores on the waiting list*. The Department will place on a waiting list eligible stores as follows:

(1) A store that seeks to become a WIC authorized store if no store slots are open in the trade area where the store is located.

(2) When the total number of stores seeking certification or recertification is greater than the total number of store slots available for the trade area, and the store meets all selection criteria and has prices within the maximum allowable costs of Food Prescription One and Food Prescription Two, but is denied authorization because its weighted price is higher than other stores meeting all selection and limitation criteria.

(3) A store that seeks to apply during a moratorium as set forth in § 1103.1(c) (relating to certification and recertification reviews).

(4) When a store slot is open and the store seeking certification is located within 1 mile of a WIC authorized store, if the Department determines that there is not sufficient WIC participant shopping within the 1-mile area to support an additional WIC authorized store.

(b) *Certification review of stores on waiting list*. The Department will ensure that all stores on the waiting list in a trade area will be reviewed when a store slot becomes available in the trade area, or when stores in the trade area are reviewed during the next contemporaneous certification/recertification review process. The only exception to reviewing all stores on the waiting list is when a store slot opens as a result of a change of ownership of a store and the store, under new ownership, applies for certification under section § 1105.4(c) (relating to change of ownership of a WIC authorized store). The Department will review the store under its new ownership to determine if the store should receive certification.

§ 1103.7. Inadequate participant access.

(a) The Department will consider whether there is inadequate participant access when considering whether to place a store on probation, rather than deny recertifica-

tion, for failure to meet selection and limitation criteria in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process) during recertification reviews.

(b) The Department may also consider whether there is inadequate participant access when deciding whether to place on probation a store undergoing a change of ownership under § 1105.4(b) and (c) (relating to change of ownership of a WIC authorized store).

(c) Inadequate participant access is any of the following:

(1) Ten or more participants whose specific nationality, ethnicity or religious dietary needs can not be served properly by another WIC authorized store located in accordance with one of the following:

(i) Less than 3 miles of the store for counties with WIC participant density less than 25 participants per square mile.

(ii) Less than 2 miles of the store for counties with WIC participant density of 25 to 100 participants per square mile.

(iii) Less than 1 mile of the store for counties with WIC participant density greater than 100 participants per square mile.

(2) Ten or more participants will be required to travel in accordance with one of the following:

(i) Three or more miles to the next closest WIC authorized store for counties with WIC participant density less than 25 participants per square mile.

(ii) Two or more miles to the next closest WIC authorized store for counties with WIC participant density of 25 to 100 participants per square mile.

(iii) One or more miles to the next closest WIC authorized store for counties with WIC participant density greater than 100 participants per square mile.

(3) A participant has a physical disability that cannot be accommodated by another WIC authorized store in accordance with one of the following:

(i) Within 3 miles of the store for counties with WIC participant density less than 25 participants per square mile.

(ii) Within 2 miles of the store for counties with WIC participant density of 25 to 100 participants per square mile.

(iii) Within 1 mile of the store for counties with WIC participant density greater than 100 participants per square mile.

(4) Ten or more participants are affected by physical barriers or conditions which make normal travel to another WIC authorized store impractical.

(5) One hundred or more participants but less than 200 participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 2 miles.

(6) Two hundred or more participants but less than 300 participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 1 mile.

(7) Three hundred or more participants use WIC checks to purchase allowable foods at the store and the distance to the next closest WIC authorized store exceeds 3/10 of a mile.

(8) A WIC authorized store changes ownership without the Department receiving prior notice sufficient to arrange other accommodations for participants.

CHAPTER 1105. REQUIREMENTS OF WIC AUTHORIZED STORES

§ 1105.1. Training.

(a) *Initial training.* Following certification, the local agency shall provide initial training for the personnel a certified store designates. The training shall be mandatory and shall occur within 30 days after the date of certification. A store receiving certification may not accept WIC checks prior to having its designated personnel attend the initial mandatory training.

(b) *Annual training.* The Department will provide for WIC authorized stores annual training which is designed to prevent WIC Program errors and abuses and to improve WIC Program services. The following apply to annual training:

(1) A WIC authorized store shall ensure that at least one representative from the store who is responsible for training store personnel on the WIC Program shall attend.

(2) Attendance is mandatory.

(3) The Department will offer each WIC authorized store two opportunities to attend.

(4) The Department will ensure that annual training is offered to a WIC authorized store either within the county in which it is located or in an adjoining county within the appropriate local agency's jurisdiction.

(5) Failure to have at least one representative attend training shall result in the Department imposing sanctions against the WIC authorized store as in § 1107.1a(d)(16) (relating to disqualifications).

(c) *Corrective training.* The Department will provide corrective training as set forth in §§ 1103.2 and 1105.6 (relating to probationary certification; and monitoring of WIC authorized stores). Attendance is mandatory.

§ 1105.2. Overcharge recovery system.

(a) *Quarterly price reports.* A WIC authorized store shall provide to the Department, in a format prescribed by the Department, the highest prices the store charged for allowable foods during the previous quarter for which the Department collects prices. The report shall be known as the Quarterly Price Report. A store may submit its Quarterly Price Report by mail or fax. If submitted by mail, the Quarterly Price Report shall be postmarked no later than the 15th of the month following the end of the calendar quarter. If submitted by fax, the Quarterly Price Report must be received by the Department by the 15th of the month following the end of the calendar quarter.

(b) *Department review.* The Department will review WIC check amounts redeemed by a WIC authorized store against the prices reported on the store's Quarterly Price Report to determine and collect overcharges owed to the Department.

(c) *Determination of maximum redemption amount of each WIC check.* For each WIC check redeemed for which the store was reimbursed for the sale of foods for which the Department collects prices, the Department will determine the maximum amount for which the WIC authorized store could have redeemed the check based upon prices provided in the Quarterly Price Reports supplied by the store.

(d) *Determination of overcharges.* The Department will compare the maximum amount for which a WIC authorized store could have redeemed a WIC check based upon the prices in the store's Quarterly Price Report, against the actual amount for which each WIC check accepted by the store during a reporting quarter was redeemed, to determine any overcharge owed to the Department.

(e) *Pursuit of reimbursement.* The Department will seek reimbursements from a WIC authorized store for the store's overcharges totaling \$10 or more for a calendar quarter.

(f) *Reimbursement of overcharges.* A WIC authorized store shall submit reimbursement of overcharges to the Department within 20-calendar days of the date on the Department's billing notice for the overcharge, unless the WIC authorized store disputes the overcharge determination.

(g) *Overcharge disputes.* A WIC authorized store that disputes an overcharge billing shall submit the basis for its dispute in writing to the Department, postmarked within 15-calendar days of the date on the Department's billing notice. Upon resolution of an overcharge dispute, any overcharge the Department determines to be owing shall be due within 15-calendar days of the mailing date on the Department's notification of its resolution of the dispute.

(h) *Sanctions.* The Department will impose a sanction against a WIC authorized store under § 1107.1a(d)(14) (relating to disqualifications) if the store fails to pay overcharges due within the time required under subsections (f) and (g).

(i) *Disqualification.* The Department may disqualify a WIC authorized store if the store's reported prices on the Quarterly Price Report exceed the current maximum allowable cost as published by the Department for Food Prescription One or Food Prescription Two, set forth in § 1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

§ 1105.3. Terms and conditions of participation.

(a) *General terms and conditions.* A WIC authorized store shall adhere to this subsection. Failure to do so shall result in the imposition of sanctions as in § 1107.1 (relating to imposition of sanctions). A WIC authorized store shall:

(1) Adhere to all applicable statutes and State and Federal regulations regulating the WIC Program, including the nondiscrimination provisions of 7 CFR Parts 15, 15a, 15b and 246, and this part.

(2) Inform the public of its participation in the WIC Program by displaying at least one WIC decal supplied by the Department in a place conspicuously visible to the general public.

(3) Monitor, supervise and be accountable for the actions of employees in the handling of WIC checks, the selling of allowable foods, and the performance of other conduct related to the WIC Program.

(4) Maintain the minimum inventory of allowable foods on the premises.

(5) Ensure that allowable foods are properly stored and refrigerated.

(6) Ensure that there are no stale dated allowable foods on the sales floor.

(7) Provide the Department, on the Quarterly Price Report Form provided by the Department, the highest prices of allowable foods specified on the report form.

(8) Maintain a clean and sanitary store.

(9) Provide orientation and training to employees regarding applicable regulations governing the WIC Program.

(10) Maintain a copy of the current WIC food list at each check-out aisle.

(11) Send at least one representative who is responsible for training store personnel on the WIC Program to WIC Program training annually, or more often if required by the Department under § 1105.1(c) (relating to training).

(12) Immediately notify the Department when store ownership changes, when store operations cease on a permanent or temporary basis, or when any other circumstance impacting service to participants occurs.

(13) Allow Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, to visit the store to observe its procedures for accepting and handling WIC checks and to conduct announced or unannounced onsite reviews to determine compliance with applicable Federal and State regulations.

(14) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to all WIC checks accepted by the store and on its premises at the time of an onsite review.

(15) Provide Federal, State, Department and local agency representatives who are involved in monitoring the store's compliance with statutes and regulations governing the WIC Program, access to price and inventory records during an onsite review.

(16) Agree that neither the Department nor the WIC authorized store has an obligation to renew the store's authorization to participate in the WIC Program.

(17) Agree that the store's authorization to participate in the WIC Program shall become void when ownership of the store changes.

(18) Display the current shelf price of each allowable food either on the allowable food, on the shelf immediately above or below the allowable food, or prominently on an allowable food price list easily located by participants and clearly visible to them.

(19) Not transfer or assign its WIC certification or recertification to another person or entity.

(20) Reimburse the Department for funds received through transactions involving WIC checks which were not conducted in accordance with this part.

(21) Maintain price and inventory records for allowable foods for a minimum period of 6 months from the date of receipt of the inventory.

(b) *Terms and conditions of participation with regard to participants.* A WIC authorized store shall serve participants as set forth in this subsection. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in § 1107.1. A WIC authorized store shall:

(1) Provide allowable foods to participants only as authorized on the WIC food list and as specified on the WIC check.

(2) Not encourage or discourage a participant from purchasing allowable foods specified on the WIC check.

(3) Provide allowable foods to participants at or below the current price the store charges other customers.

(4) Not seek restitution or payment from participants for WIC checks not reimbursed by the Department, or contact participants concerning WIC transactions that occur in the store.

(5) Not seek restitution or payment from participants for allowable foods when the price the store charges for the allowable foods exceeds the "Not to Exceed" amount on the WIC check.

(6) Not request personal addresses, telephone numbers or other personal identification of participants.

(7) Offer participants the same courtesies offered other customers, and not distinguish or identify participants from other customers.

(8) Provide services to participants without regard to race, color, age, sex, religion, national origin or disability.

(9) Give trading stamps to participants for purchases made with WIC checks if trading stamps are given for cash purchases.

(10) Accept cents-off coupons, a store discount card or other discounts from participants for allowable foods, and deduct the savings in calculating the total purchase price entered into the "Pay Exactly" amount on WIC checks.

(11) Accept "buy one get one free" coupons and manufacturers' promotional free product offers from participants.

(c) *Terms and conditions of participation with regard to WIC check processing and redemption.* A WIC authorized store shall adhere to the requirements of this subsection with regard to WIC check processing and redemption. The Department will impose sanctions against a WIC authorized store that fails to do so, as set forth in § 1107.1. A WIC authorized store shall:

(1) Treat the acceptance of a WIC check as a financial transaction between only the Department and the WIC authorized store, not the participant.

(2) Accept a WIC check only if the WIC check is made payable to that specific WIC authorized store, unless the Department has provided written authorization otherwise to the store.

(3) Accept a WIC check only if the participant, endorser or proxy presents the WIC check on or between the "First Day to Use" and the "Last Day to Use" designations on the WIC check.

(4) Accept a WIC check only if a valid WIC identification card is presented at the time of redemption.

(5) Accept a WIC check only if the signature of the participant, endorser or proxy is obtained, at the time of purchase, on the WIC check, and the signature on the WIC check matches the signature on the WIC identification card.

(6) Accept a WIC check only if there is no visible alteration on the WIC check.

(7) Charge the WIC Program only for the types and quantities of allowable foods specified on the WIC check and selected for purchase by the participant, endorser or the participant's proxy.

(8) Record in ink, on each WIC check immediately after completion of the WIC transaction and prior to the participant, endorser or proxy signing the WIC check, the actual purchase amount of the transaction net of any cents-off coupons or other discounts.

(9) Properly correct an error made in recording the "Pay Exactly" amount of a WIC check by drawing a single line through the incorrect amount and writing the correct amount above or below the error and having the participant, endorser or proxy initial next to the corrected amount. No other corrections are permissible.

(10) Not alter any information on the WIC check as presented by the participant, endorser or proxy.

(11) Not provide substitute items, rainchecks or cash reimbursement for allowable foods that are unavailable.

(12) Not provide cash or credit for a WIC check.

(13) Not provide change for the difference between the "Not to Exceed" and the "Pay Exactly" amounts on the WIC check nor for any coupons tendered during the WIC transaction.

(14) Not refund money or provide exchanges to replace allowable foods returned by participants, endorsers or proxies.

(15) Not accept a WIC check as payment for items other than allowable foods specified on the WIC check.

(16) Not charge the WIC Program for allowable foods not received by the WIC participant or for allowable foods provided in excess of those listed on the WIC check.

(17) Not charge the WIC Program for the sale of an amount of an allowable food which exceeds the store's documented inventory of that food item covering the period of time under review and in which the sale was made.

(18) Deposit WIC checks accepted by it directly to its bank account no later than 45 days after the "First Day to Use" date on the WIC check.

(19) Not receive, transact, redeem or otherwise dispose of a WIC check outside of check redemption procedures set forth in this section.

(20) Not use a WIC check for the purchase of any commodity or the payment of any debt.

(21) Not collect sales tax on allowable food purchases.

(22) Reimburse the Department for payments the store has received for improperly executed WIC checks.

(d) The Department will deny payment to a WIC authorized store for WIC checks which the store did not process under subsection (c).

§ 1105.4. Change of ownership of a WIC authorized store.

(a) A certification or recertification is void when a change of ownership of a WIC authorized store occurs.

(b) To allow uninterrupted service to participants subsequent to a change of ownership, the Department may accept an application for certification from the prospective new owner of a WIC authorized store prior to a change of ownership.

(c) When a change of ownership occurs and inadequate participant access as defined in § 1103.7(c)(8) (relating to inadequate participant access) would result, the store under the new ownership may receive probationary certification for a period not to exceed 6 months if the State conducts an immediate onsite visit followed by a complete certification visit at the store. Until the immediate onsite visit is conducted, the new owner may not accept WIC checks. As soon as possible within the 6-month probationary period or during the next recertification process,

whichever occurs first, the store under the new ownership shall compete with stores on the waiting list in the trade area for the store slot.

(d) The Department will not accept an application for certification from a store that has been provided notice of disqualification or is serving a disqualification if an individual who had at least a 10% ownership interest in the store has at least a 10% ownership interest in the applicant or such ownership interest has been transferred or sold to immediate family members of the individual.

§ 1105.6. Monitoring of WIC authorized stores.

(a) *Purpose and types of monitoring of WIC authorized stores.* Federal, State or local representatives will conduct announced and unannounced onsite reviews of WIC authorized stores to determine compliance with applicable Federal and State regulations, and to investigate complaints regarding a store. The types of onsite reviews that may be conducted for monitoring purposes are high risk reviews, routine reviews and training buys.

(b) *High risk reviews.* The Department will monitor all high risk stores. The Department will use either compliance investigations or inventory audits as methods to monitor high risk stores. The Department also may conduct compliance buys and inventory audits on stores that have not been identified as high risk stores.

(1) *Compliance investigations.* The following standards apply:

(i) The Department will conduct at least two compliance buys during a compliance investigation.

(ii) The Department will not notify the WIC authorized store that a compliance buy is scheduled.

(iii) The Department will provide written notification to the WIC authorized store of the results of each compliance buy, including the store's violation of a statute or regulation governing its participation in the WIC Program, unless subparagraph (viii) applies.

(iv) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two compliance buys detect violations of statutes or regulations governing the store's participation in the WIC Program.

(v) The Department will conduct a third compliance buy at the WIC authorized store after store personnel have attended mandatory corrective training.

(vi) The Department will impose a sanction in accordance with § 1107.1 (relating to imposition of sanctions) against the store if three compliance buys detect violations of statutes or regulations governing the store's participation in the WIC Program. If multiple violations are found during the compliance investigation, the Department will impose the sanction against the store for the term corresponding to the most serious violation.

(vii) The Department will close the compliance investigation on a WIC authorized store if no violations of a statute or regulation governing the store's participation in the WIC Program are discovered after two consecutive compliance buys.

(viii) The Department may withhold notification of compliance buy results, and may withhold providing training or conducting further compliance investigations, when fraudulent activities by the WIC authorized store are indicated during a compliance investigation or by local agency or participant complaint.

(2) *Inventory audits.* The Department will disqualify the WIC authorized store when an inventory audit establishes the claim of reimbursement for authorized food in excess of documented inventory. No warning letters will be issued.

(c) *Routine reviews.* The Department will use reviews as follows to determine whether a WIC authorized store is in compliance with the selection and limitation criteria in § 1103.4(a) and (b) (relating to selection and limitation criteria; authorization process) and terms and conditions of participation in § 1105.3 (relating to terms and conditions of participation):

(1) The Department will not notify the WIC authorized store that a routine review is scheduled.

(2) The Department will provide written notification to the WIC authorized store of the results of each routine review, including violation of a statute or regulation governing the store's participation in the WIC Program.

(3) The Department will conduct a second routine review of the WIC authorized store if the first routine review detects violations of a statute or regulation governing the store's participation in the WIC Program.

(4) The Department will provide to the personnel of the WIC authorized store mandatory corrective training after two routine reviews detect violations of a statute or regulation governing the store's participation in the WIC Program.

(5) The Department will conduct a third routine review of a WIC authorized store after store personnel have attended mandatory corrective training.

(6) The Department will impose a sanction in accordance with § 1107.1 against a store if a third routine review detects violations of a statute or regulation governing the store's participation in the WIC Program. If multiple violations are found during the routine reviews, the Department will impose the sanction against the store for the term corresponding to the most serious violation.

(d) *Training buys.* The Department will use training buys to monitor WIC check transaction procedures and compliance with statutes and regulations governing the store's participation in the WIC Program. The following standards shall apply:

(1) The Department will not notify the WIC authorized store that a training buy is scheduled.

(2) The Department will provide written notification to the WIC authorized store of the results of each training buy, including violations of a statute or regulation governing the store's participation in the WIC Program.

(3) The Department will conduct a second training buy at the WIC authorized store if the first training buy detects violations of a statute or regulation governing the store's participation in the WIC Program.

(4) The Department will provide the personnel of the WIC authorized store mandatory corrective training after two training buys detect violations of a statute or regulation governing the store's participation in the WIC Program.

(5) The Department will conduct a third training buy at the WIC authorized store after store personnel have attended the mandatory corrective training.

(6) The Department will impose a sanction in accordance with § 1107.1 against a store if a third training buy detects violations of a statute or regulation governing the

store's participation in the WIC Program. If multiple violations are found during the training buys, the Department will impose the sanction against the store for the term corresponding with the most serious violation.

(e) *Use of law enforcement agency.* The Department may utilize a law enforcement agency in the investigation of a WIC authorized store or other store suspected of trafficking WIC checks or other fraud or abuse of the WIC Program.

(f) *Reimbursement.* The Department will seek reimbursement from a WIC authorized store that received funds improperly due to a violation of regulations governing the store's participation in the WIC Program discovered during monitoring reviews. The Department will send notice to the store of the amount of money to be reimbursed to the WIC Program. The store shall make payment within 20 days from the date of the notice.

CHAPTER 1107. SANCTIONS

§ 1107.1. Imposition of sanctions.

(a) The Department may disqualify a store or impose a civil money penalty in lieu of disqualification for reasons of program abuse. In the case of fraud, trafficking, sale of alcohol or alcoholic beverages or tobacco products the Department will not provide the store with a prior warning that violations were occurring before imposing the sanctions. For other serious program violations or offenses, the Department may choose to not provide the store with prior warning that violations were occurring before imposing the sanctions. The store may appeal a Department decision pertaining to disqualification, denial of application to participate, or other adverse actions that affect participation during the agreement performance period in accordance with § 1113.1 (relating to right to appeal). Expiration of an agreement with a store, disqualification of a store as a result of disqualification from the Food Stamp Program, and the Department's determination regarding inadequate participant access are not subject to review.

(b) The Department will disqualify a store which has been disqualified from the Food Stamp Program unless the Department determines that the disqualification of the store would result in inadequate participant access under § 1103.7 (relating to inadequate participant access). If the Department determines that disqualification of the store would result in inadequate participant access under § 1103.7, the Department will give the store the option of paying a civil money penalty in lieu of WIC disqualification.

(c) The Department will disqualify a store for WIC Program violations in § 1107.1a (relating to disqualifications) unless the Department determines that disqualification of the store under § 1107.1a(b)—(d) would result in inadequate participant access. In that case, the Department will give the store the option of paying a civil money penalty in lieu of disqualification. The Department will not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations.

(d) Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. The disqualification may not be subject to administrative or judicial review under the Food Stamp Program.

(e) In addition to imposing a sanction against a WIC authorized store that commits fraud or abuse of the WIC Program, the Department may prosecute or make a referral for prosecution of the WIC authorized store to a

criminal prosecution agency for prosecution under applicable Federal, State or local laws.

(f) A WIC authorized store that has a sanction imposed against it by the Department for accepting a WIC check for items other than those specified on the WIC check shall also reimburse the Department for monies received for the purchase of these items with the WIC check.

(g) The Department may impose a sanction against a WIC authorized store for failing to remit any amount demanded due to violations of statutes or regulations governing its participation in the WIC Program within the time frame in § 1105.2(f) and (g) (relating to reimbursement of overcharges) or the notice given by the Department under § 1105.6(f) (relating to monitoring of WIC authorized stores).

§ 1107.1a. Disqualifications.

(a) *Permanent disqualification.* The Department will permanently disqualify a WIC authorized store convicted of trafficking in WIC checks or selling firearms, ammunition, explosives or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C.A. § 802)) in exchange for WIC checks. The Department will not compensate the store for revenues lost as a result of the violation.

(b) *Six-year disqualification.* The Department will disqualify a WIC authorized store for 6 years for either of the following:

(i) One incidence of buying or selling WIC checks for cash (trafficking).

(ii) One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in section 102 of the Controlled Substances Act, in exchange for WIC checks.

(c) *Three-year disqualification.* The Department will disqualify a WIC authorized store for 3 years for any of the following violations:

(1) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC checks.

(2) A pattern of claiming reimbursement for the sale of an amount of a specific allowable food, which exceeds the store's documented inventory of that specific allowable food item for a specific period of time. A pattern may be established during a single inventory audit encompassing a 2-month period when a WIC authorized store's records indicate that the WIC authorized store's redemptions for a specific allowable food exceed the WIC authorized store's documented inventory for that allowable food.

(3) Two or more incidences of charging participants more for an allowable food than non-WIC customers or charging participants more than the current shelf price.

(4) Two or more incidences of receiving, transacting or redeeming WIC checks outside of authorized channels, including the use of an unauthorized store or an unauthorized person, or both.

(5) Two or more incidences of charging for allowable food not received by the participant.

(6) Two or more incidences of providing credit or nonfood items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in section 102 of the Controlled Substances Act, in exchange for WIC checks.

(d) *One-year disqualification.* The Department will disqualify a WIC authorized store for 1 year for any of the following violations:

(1) Two or more incidences of providing unauthorized food items in exchange for WIC checks, including charging for allowable food provided in excess of those listed on the WIC check.

(2) Having stale-dated allowable food on the sales floor.

(3) Failing to maintain on the premises at all times minimum inventory requirements of an allowable food.

(4) Failing to request the participant's WIC identification card prior to accepting a WIC check.

(5) Accepting a WIC check made payable to another store without prior written approval from the Department.

(6) Failing to maintain a clean and sanitary store.

(7) Failing to properly store and refrigerate allowable foods.

(8) Closure of the store by a city, local or county health department.

(9) Charging or demanding that a participant pay for an allowable food with the participant's own money or with another WIC check for purchases made with a WIC check.

(10) Securing the signature of the participant, endorser or proxy prior to completing the "Pay Exactly" box on the WIC check.

(11) Overcharging the WIC Program by charging sales tax.

(12) Having or charging prices which exceed the current maximum allowable costs established by the Department and published in the *Pennsylvania Bulletin* for either Food Prescription One or Food Prescription Two set forth in § 1103.4(a)(6)(i) and (ii) (relating to selection and limitation criteria; authorization process).

(13) Giving monetary change to an authorized individual who tenders a WIC check.

(14) Failing to remit payment for an overcharge within the specified time frame under either §§ 1105.2(f) and (g) or 1105.6(f) (relating to overcharge recovery system; or monitoring of WIC authorized stores).

(15) Physically altering or changing on the face of a WIC check the store name, food type or quantity, participant information, date or printed dollar amount.

(16) Failing to have at least one representative of the store attend required training.

(e) *Second mandatory sanction.* When a WIC authorized store, which previously has been assessed a sanction for any of the violations in subsections (b)—(d), receives another sanction for any of these violations, the Department will double the second sanction. The Department will double civil money penalties up to the limits allowed under § 1107.3(c) (relating to civil money penalties).

(f) *Third or subsequent mandatory sanction.* When a WIC authorized store, which previously has been assessed two or more sanctions for any of the violations listed in subsections (b)—(d), receives another sanction for any of these violations, the Department will double the third sanction and all subsequent sanctions. The Department will not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed in subsections (b)—(d).

(g) *Multiple violations during a single investigation.* When during the course of a single investigation the Department determines a WIC authorized store has committed multiple violations, the Department will disqualify the WIC authorized store for the period corresponding to the most serious violation. However, the Department will include all violations in the notice of disqualification action.

(h) *Disqualification based on a Food Stamp Program disqualification.* The Department will disqualify a WIC authorized store which has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the Food Stamp Program disqualification, but may begin at a later date than the Food Stamp Program disqualification. Under 7 CFR 246.12(k)(1)(vii) and 1113.1(b)(3) (relating to right to appeal), the WIC program disqualification is not subject to administrative or judicial review under the WIC Program.

(i) *Voluntary withdrawal or nonrenewal of agreement.* The Department will not accept voluntary withdrawal of the WIC authorized store from the WIC Program as an alternative to disqualification for the violations listed in subsections (a)—(d), but will enter the disqualification on the record. The Department will not permit the store to use nonrenewal of a store agreement as an alternative to disqualification.

(j) *Other violations.* For any violation of a statute or regulation governing the store's participation in the WIC Program which is not specifically classified in subsections (a)—(d), the Department will determine the appropriate type and level of sanction to be imposed upon the store based upon the nature and severity of the violation. A disqualification imposed under this subsection will not exceed 1 year.

(k) *Advance notice.* The Department will provide a WIC authorized store at least 30 days advance notice of the effective date of any disqualifications and, if appropriate, an opportunity to appeal the disqualification under § 1113.1 (relating to right to appeal).

(l) *Certification following expiration of disqualification period.* A store that has been disqualified from the WIC Program may apply for certification following expiration of the disqualification period. If the store chooses to apply for certification after expiration of the disqualification, the Department will not consider the prior disqualification from the WIC Program when determining eligibility. The store will be considered in accordance with § 1103.4 (relating to selection and limitation criteria; authorization process) or placed on a waiting list in accordance with § 1103.6 (relating to waiting list).

§ 1107.2. Civil money penalties.

(a) *Option available in lieu of a disqualification.* The Department may offer to a store the option of paying a civil money penalty in lieu of a denial of recertification or a disqualification required under § 1107.1 (relating to imposition of sanctions), only if the Department finds inadequate participant access as set forth in § 1103.7 (relating to inadequate participant access). The Department will not provide this option for third or subsequent violations in § 1107.1a(b)—(d) (relating to disqualifications).

(b) *Calculation of civil money penalty.*

(1) For civil money penalties in lieu of disqualifications under § 1107.1a(b), (c) and (d)(1), the Department will calculate the civil money penalty for each violation identi-

fied by multiplying 10% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under § 1107.1. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

(2) For disqualifications identified in § 1107.1a(d)(2)—(16), the Department will calculate the civil money penalty for each violation identified by multiplying 5% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under § 1107. 1. For stores which are denied recertification for which this option is available, the Department will multiply 5% of the average monthly total value of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

(c) *Limitation of Penalties.* The amount of the civil money penalty will not exceed \$10,000 for each violation. When, during the course of a single investigation, the Department determines a store has committed multiple violations, the Department will impose a civil money penalty for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation will not exceed \$40,000.

(d) *Written agreement.* If the Department offers and the store agrees to pay a civil money penalty in lieu of disqualification, the Department and store shall set forth the terms of the agreement in writing. The terms may include a probationary period during which the Department may conduct monitoring to ensure action has been taken by the store to correct problems. The agreement will be effective when it is signed by the Director of the Division of WIC or the Director's designee.

(e) *Payment of the civil money penalty.* If a WIC authorized store does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the Department will disqualify the WIC authorized store for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed. If a civil money penalty is assessed for more than one violation, the Department will impose the disqualification for the period corresponding to the most serious violation. The Department may permit payment of civil money penalties by installments.

(f) *Outstanding financial liabilities.* Payment of the civil money penalty, unless specifically provided for in a written agreement between the Department and the store, does not relieve the store of any other past or future financial liability incurred by the store by reason of its participation in the WIC Program. This includes, by way of example, payment to the Department of outstanding overcharges for the acceptance of WIC checks for the sale of unauthorized foods.

CHAPTER 1113. LOCAL AGENCY AND STORE APPEALS.

§ 1113.1. Right to appeal.

(a) A store or local agency adversely affected by a Division of WIC action has the right to appeal. The right of appeal shall be granted when a local agency's or store's application to participate in the WIC Program is denied;

or during the course of an agreement or period of authorization, when a local agency or store is disqualified; or when any other adverse action during the period of authorization which affects participation is taken against the store or local agency by the Division of WIC.

(b) The following actions are not subject to appeal:

(1) The expiration of a WIC authorization.

(2) The Division of WIC's determination regarding participant access.

(3) Disqualification from the WIC program of a store as a result of disqualification from the Food Stamp Program.

(c) The appeal process is designed to secure and protect the interest of both the store or local agency and the Division of WIC and to ensure equitable treatment for all involved.

(d) Except for permanent disqualifications assessed under § 1107.1a(a) (relating to disqualifications), the Department may take adverse action against a store after 30 days advance notification.

(e) In the case of a disqualification of a local agency, the Department will provide at least 60 days advance notice.

§ 1113.2. Appeal procedures.

(a) *Notification.* At the time the Division of WIC denies an application of a store, or disqualifies a WIC authorized store or takes an adverse action against a local agency or store during a period in which the local agency or store is authorized, the Division of WIC will notify the local agency or store of its right to an administrative appeal.

(b) *Form of appeal.* The appeal shall be made by the local agency or store or its authorized representative, in writing, stating the reasons for the appeal.

(c) *Time for filing an appeal.* The appeal shall be filed with the Director of the Division of WIC within 30 days after any final decision by the Division of WIC.

(d) *Scheduling the hearing.*

(1) The Director of the Division of WIC shall forward the appeal to the office of the hearing examiner.

(2) The hearing examiner shall set a time, date and place for the hearing.

(3) The hearing examiner shall send notice to the local agency or store, or its authorized representative, at least 10 days in advance of the date of the hearing.

(4) The hearing examiner shall schedule the hearing to be held within 21 days after the date of receipt by the Division of WIC of the local agency or store appeal.

(5) The Department or the appellant may request in writing that the hearing be rescheduled for another time or date and the hearing examiner shall consider the request.

(e) *Hearing examiner.* The Secretary will appoint a hearing examiner to preside over the appeal. The person shall be an impartial decision-maker, whose decision as to the validity of the Department's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the WIC program, and who may not have participated in the decision made by the Division of WIC or have any personal stake in the outcome.

(f) *Hearing procedures.*

(1) The local agency or store may be assisted or represented by an attorney or other authorized representative.

(2) The local agency or store, or its authorized representative, may examine, prior to and during the hearing, the documents and records considered by the Division of WIC in reaching its decision under appeal.

(3) The hearing shall be open to the public.

(4) Each party shall have the opportunity to present and cross-examine witnesses.

(5) Each party may present oral or documentary evidence and arguments to support its position in narrative form.

(6) Each party may object to or attempt to refute any testimony or other evidence presented by the other party.

(g) *Supersession.* Subsection (d) supersedes 1 Pa. Code § 35.105 (relating to notice of nonrulemaking procedures). Subsection (e) supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers). Subsection (f) supplements 1 Pa. Code § 31.21 (relating to appearance in person) and supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney; and other representation prohibited at hearings).

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